

The H-2A Temporary Agricultural Worker Program:
The Program, Its Environment, Its Reforms, Its Future

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INTRODUCTION

The debate over foreigners coming into the United States to perform temporary or seasonal work in its labor intensive industries, in particular the agricultural industry, and their treatment is currently an issue spurring much discussion and debate in the business, labor activist, and lawmaking realms. In respect to the agricultural industry, vegetable producers, field crop producers, ranchers, horticulturalists, and other agricultural sub-industries are currently dependent on these temporary employees from outside the U.S. borders. These producers have found it difficult to find a stable, legal workforce for their labor intensive work in timely fashion even through the use of the H-2A Temporary Agricultural Worker Program. As such, many agricultural producers have turned away from programs like H-2A towards consciously or ignorantly hiring undocumented (i.e. illegal) foreign workers to accomplish the time specific work and to remain globally competitive.

This practice has not been without major resistance, however. The U.S. government and domestic labor activists contend that the hiring of undocumented workers prevents the hiring of domestic laborers and domestic migrant workers catalyzing chronic unemployment, poverty, deflated farm wages, decreased worker benefits, and adverse working conditions. Other labor groups and unions more supportive of the foreign temporary workers view the current conditions of farm labor employment (including those within the H-2A program) as inadequate in respect to wages, benefits, and working conditions. Both domestic and foreign labor advocates demand improvement in this adverse agricultural working environment even if the improvement equates to the scrapping of the H-2A program.

Employers within the agricultural industry have also recognized the failure of the H-2A program and are currently pushing reform measures. The trend is for agricultural employers to be most concerned with establishing a legal, stable workforce where an employer can obtain qualified employees in a timely manner. Currently, employers protest that they are faced with only two options for obtaining the quantity of labor they need and when they need it. On the one hand, they can use the H-2A program, which is cumbersome, confusing, costly, and has a history of not providing labor on a timely basis. The other option is to hire undocumented aliens or aliens whose status is unknown to the employer (through fraudulent documents) to establish a consistent workforce. This option runs the risk of penalization by the Immigration and Naturalization Service (INS), which could come in the form of steep fines, jail time, or the closing of the business.

Neither choice is adequate through the eyes of the agricultural employers. Therefore, these employers, their organizations, and their supporting members in Congress have proposed reforms of the H-2A program or replacement programs in Congress so employers can obtain their legal and stable workforce. Yet, none have passed due to the resistance from the foreign/ domestic labor advocates and opposing members of the government who have different opinions as to what H-2A reform should be. Though discouraged, agricultural employers and their supporters are currently pushing more reform bills while their past opponents (the White House and conservative congressmen) are working on their own reforms.

The objective of this paper is to determine why the H-2A Temporary Agricultural Program has failed, to enumerate underlying causes of the failure, and to predict what

needs to be done to correct the consistent inadequacy of the program and U.S. immigration policy in general. To achieve these conclusions, the history of the H-2A program, the program itself, and its past and current attempts at reform will be discussed in turn through a domestic and foreign perspective.

PART I- THE H-2A TEMPORARY AGRICULTURAL WORKER PROGRAM

A History of the H-2A Program

The United States had been dependent on nonimmigrant and migrant labor long before the creation of the H-2A temporary agricultural worker program. Since the birth of the nation, the U.S. has always looked outside its borders for things not in sufficient supply within the country. This is particularly true in respect to unskilled, temporary labor. Even when race, class, and political bias sought to restrict foreigner entry, legal provisions and business needs have always overcome these obstacles.

In early U.S. history, most immigrants were from Western Europe. Towards the second half of the 19th century, immigrants from Eastern Europe and Asian were also beginning to come to the U.S. in large quantities. Given their impoverished status and the rise of industrialization in the U.S. during this period, these immigrants were drawn into extremely labor-intensive jobs like the railroad or urban industry where there was a great need of unskilled or semi-skilled labor. The U.S. economy was thriving at the turn of the 20th century in part from riding the strength of this human capital in physically demanding jobs. As a result, the U.S. economy became dependent on this type of labor.

Agriculture in the U.S. did not start looking outside of the nation's borders for labor, however, until after 1900. The early 1900's witnessed only a gradual increase in foreign labor in agriculture, most of whom were Mexican. However, the U.S. would not encounter a significant need of foreign agricultural laborers until World War I. With a significant share of the U.S. labor force leaving to fight in Europe, many industries began searching abroad to make up for the loss of employees. The Immigration and Nationality Act (INA) of 1917 was passed allowing the Commissioner General of Immigration under the 9th proviso of Section 3 to admit temporary foreign laborers to work in many U.S. industries including the agricultural industry. The inclusion of this provision in the act demonstrated the early power of the agricultural industry over organized labor that was against the admittance of the foreign labor. Section 3 of the INA of 1917 resulted in the steady increase of foreign agricultural labor until the 1940's. At this time, more powerful legislation for admitting temporary foreign workers was passed to meet the U.S.'s World War II labor need.

Most of the admitted workers between the two world wars were Mexican. It has been theorized that this difficult agricultural work in the U.S. required individuals who could take physical and mental peonage. Mexicans, with their excellent work ethic and socio-psychological background, would appear to be the best suited for the work. This, combined with Mexico's geographic location adjacent to the U.S., led to negotiations between the two countries to create an international contract permitting more foreign agricultural laborers in the U.S. than ever before. This contract was first drafted on August 4, 1942 and is referred to as The Official Bracero Agreement* after the colloquial term *bracero* meaning field hands (literally: working with the arm).

* Sometimes referred to as the Second Bracero Program as will be discussed later.

The Official Bracero Agreement

“For the temporary migration of Mexican agricultural workers to the United States. As revised April 26, 1943, by an exchange of notes between the American embassy at Mexico City and the Mexican Ministry for Foreign Affairs.”*

The Bracero Agreement contained four basic provisions:

- 1) Contracted Mexicans will not be involved in military service
- 2) Contracted Mexicans will not suffer any acts of discrimination
- 3) Contracted Mexicans are given guarantees of transportation, living expenses, and Repatriation in Article 29 of the Mexican Federal Labor Law (see **Appendix I**)
- 4) Mexicans can not displace U.S. domestic workers or be employed to reduce pay of the domestic workers

The agreement explained the wages and working conditions for those Mexicans to be contracted. The Braceros' wages had to be similar to those already working in the region unless the worker could not perform normal work as determined by the Mexican Government. Piece rates must be so the average worker could obtain the prevailing wage rate of \$0.30 per hour. The Mexican Government and the worker must both have consented before a worker could change the worksite. Children under 14 years of age of the contracted Braceros were not permitted to work and were to receive the same education as the children of domestic agricultural working parents. Braceros would also receive the same housing, health services, and occupational safety as their domestic counterparts. Also, if the contracted workers became unemployed for 75 percent of the contracted time period, they were to receive \$3.00 each day for this time period equal to 75 percent of the work period (this is later referred to as the $\frac{3}{4}$ guarantee) to prevent employers from negligently requesting an overabundance of Braceros to drive wages down. Finally, a contracted Mexican who did not leave the country after the end of the contract period would be considered an illegal alien in the U.S. if the contract was not renewed.

In addition to these wage and employment guarantees, a Savings Fund was established under the agreement. Under this provision, the proper U.S. agencies were responsible for safekeeping of the Braceros' Rural Savings Fund, which would ultimately be transferred through various banks to the Mexican Agricultural Credit Bank. This final entity had the ultimate responsibility for these Security Savings.

The agreement concluded with a few general considerations. First, the U.S. government would ensure that the U.S. agencies involved in the agreement would comply with it. Secondly, either government had the ability to terminate the contract if a 90-day notification was given prior to the desired termination date. And finally, the Mexican Government had the sole authority over how many workers were to be permitted to the U.S. based on the number requested by the host country.

Vehicles for the Agreement

* Hidalgo, Ernesto, et. al. The Official Bracero Agreement. Mexican Foreign Affairs Ministry, Mexican Ministry of Labor, Counsel of the American Embassy in Mexico, United States Department of Agriculture. 26 Apr. 1943.

Various U.S. government regulations and authorities permitted the execution of the agreement from 1942 to 1951. In July 1951, the Agricultural Act of 1949 was amended with the addition of Title V. This title contained in it Public Law 78 which was to govern the future admission of Braceros. The following year, Congress passed a new Immigration and Nationality Act (INA of '52), also known as the McCarran-Walter Act, repealing the INA of 1917. This act contained Public Law 414 also governing the entrance of alien workers. As a consequence, any temporary farm worker from Mexico entering the U.S. from 1951- 64 was officially admitted under one of these two public laws.

The Bracero Agreement officially ended in 1964 even though small numbers of Braceros were admitted into the U.S. from 1964- 67. The program basically ran for 22 years (1942- 64) legally contracting over 4.5 million Mexicans during the time period with California receiving more than any other state. Mexico attempted to renew the contract with the state of California alone in 1973 with a request to lend 300,000 agricultural workers a year. California rejected the proposal, however. The U.S., therefore, did not legally admit any temporary agricultural workers again until 1977 when President Jimmy Carter, by executive order, admitted a few foreign laborers (mainly from Mexico, Canada, and the West Indies) to Texas. The H-2A Temporary Agricultural Worker Program would not become law until 1986, once again allowing agricultural employers to request the services of temporary and seasonal nonimmigrants.

Effects of the Bracero Program

The Bracero Program can be seen as a success in light of the millions of Mexican participants and the fact that the U.S. agricultural industry would not have been as competitive (or quite possibly may not have even survived as a specialized national industry) if not for the Braceros. As will be discussed later, Mexico saw the program as somewhat of a safety valve for its growing population and unemployment.

The program did, however, have negative aspects. Mexico, for example, became more dependent on the U.S. economy and thus exported precious human capital to the North. Many Braceros, once in the U.S., were abused, exploited, and discriminated against despite the contract between the two nations. Many lived in impoverished, makeshift tents, were given the most difficult and dangerous jobs, and were not given the full benefits promised them.

This exploitation was made possible by the Mexican government ignoring the violations, by the vagueness of the agreement and by the lack of strong enforcement of its provisions by the U.S. government. The agreement called for many standards but generally failed to set or quantify these standards. This, unfortunately, left the interpretation of the agreement up to the employer (in the absence of U.S. enforcement), who many times acted inhumanely. To worsen the situation, the temporary workers were excluded from main federal labor programs like the Fair Labor Standards Act, the National Labor Relations Act, and unemployment compensation laws. The only social security program the Braceros were apart of was OASI.

Organization of agricultural labor was non-existent in the U.S. during World War II as well. The increase in Braceros after the war only increased the problem. The agricultural industry would not see a significant movement towards organized labor until

after the Korean War when the size of the agricultural workforce contracted with the end of the program.

The U.S. finally recognized that admitting foreign workers was deterring unionization. It also began to understand the correlation between the increase in foreign, temporary workers and the increase of illegal immigration. Illegal immigration could potentially cause several problems: decrease of domestic employment, the sending of money out of the U.S. (thus affecting balance of payments), tax evasion, and the crossing the U.S. border without a medical exam.

Legacy of the Bracero Program

The influence and effects of the Bracero program are still seen in the U.S. agricultural industry. This program set the stage for future nonimmigrant programs and established the skeletons of the guarantees and requirements within these programs. The H-2A Temporary Agricultural Worker Program is the foremost example of this. As the next section will illustrate, items like wages, the $\frac{3}{4}$ guarantee, and vague terms such as “the prevailing practice” all reappear under the H-2A program. It is not surprisingly then (as will be discussed in a later section), that the H-2A program is currently problematic, much like the Bracero Program was. This includes the lack of worker protection, weak government enforcement of the provisions, and increasing illegal immigration. Before possible solutions can be discussed in response to these problems, the H-2A program must be well described and clarified.

The H-2A Temporary Agricultural Worker Program

The statute of the H-2A Temporary Visa Program for the Employment of Temporary Alien Agricultural Workers was created by Section 216 of the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act of 1986 (IRCA) for the admittance of nonimmigrant temporary or seasonal labor through the issuance of H-2A visas. The procedures and regulations of the program were promulgated by the U.S. Department of Labor (DOL) under the Code of Federal Regulations (CFR)- Pertaining to the Employment and Training Administration; Title 20- Employees Benefits; Chapter V- Employment and Training Administration, DOL; Part 655- Temporary Employment of Aliens in the United States; Subpart B- Labor Certification Process for Temporary Agricultural Employment in the U.S.

Any agricultural employer who determines that there is a need for nonimmigrant workers for temporary/ seasonal employment may apply for these laborers under the H-2A program. Employers must submit an application to the respective Regional Administrator (RA) of the U.S. Department of Labor Employment and Training Administration with a copy of the application sent to the local office of the state employment service at least 45 days before the need*. Employers are urged to submit the application well in advance of the deadline to prevent any delays in hiring as the DOL may require clarification or specific requirements which delay processing. The documents required for submission are the Application for Alien Employment Certification (Form ETA 750, Part A- Offer of Employment), the Agricultural and Food Processing Clearance Order (Form ETA 790), any supplemental information as requested by the previous forms, a copy of the job offer including the number of workers requested,

* Originally, an employer had to apply at least 60 days before the need.

and, if applicable, a statement of authorization of agent or association acting on the employer's behalf. Employers can file the applications in person, mailed certified return receipt requested, or delivered by guaranteed commercial delivery to the appropriate RA in the region of employment and to the local state employment service office. If the application is certified, the employer must then file a visa petition to the Immigration and Naturalization Service (INS) for H-2A visas for the aliens entering the U.S.

Once the application is filed, the RA will first determine if the application is acceptable for consideration (i.e. all the requirements of the application forms have been met) within seven days of receiving the application. If the RA determines that the application is unacceptable, the administrator must inform the employer why the application is unacceptable, state what changes need to be made, note what additional items need to be submitted, and enumerate the procedures for appealing the RA's decision. The employer then has five days to resubmit the application if desired.

After the application is deemed acceptable, the RA must make a decision to certify or reject the application. Applications will not be certified if it is determined that there are sufficient U.S. workers able, willing, and qualified for the job offered, if the hiring of nonimmigrant aliens will adversely affect the wages and/ or working conditions of U.S. workers of similarly employed work, or if the employer did not "actively" recruit U.S. workers for the job offered. The RA must make the certification decision at least 20 calendar days before the need. Note that certification will be denied to employers who have adversely affected the wages, working conditions, or benefits of U.S. workers, or if the employer has violated a condition or material term of a previous H-2A certification within the past 2 years of the current application.

Certain tests must be conducted to verify that the admittance of alien workers will not adversely affect domestic labor in these areas. When the local office receives the application, the office must promptly create a local job order and begin recruiting U.S. workers in the area of intended employment. The local office must also prepare an agricultural clearance order to allow the recruitment of U.S. workers by the state employment service system on an intrastate and interstate basis. The RA will give the state employment service guidance of specific recruitment efforts to be done.

The employer has recruitment requirements as well. The employer must engage in an active recruitment effort for U.S. workers. Active effort is accomplished through various means. Basic recruitment begins with newspaper and radio advertising in the areas of expected labor supply. These advertisements must enumerate the complete job offer and may be required to be bilingual (usually English and Spanish). Employers may be required to contact potential employees by phone or writing. The DOL may require the employer to contact schools, labor organizations, or other organizations in an effort to find domestic workers. Employers may also be required to assist local or state employment agencies to prepare the job orders used in the ES system. Finally, the RA may require other special recruiting efforts by the employer pertaining to the respective circumstance. The effort required by employers must be equivalent to that conducted by non-H-2A agricultural employers of similar size and work.

If after the combined recruitment efforts the RA determines that sufficient U.S. workers are available to fill the applicant's job order or that the employer did not adequately recruit U.S. workers, the administrator will deny the application. The application will also be denied if, under the RA's authority, he or she determines that the

hiring of nonimmigrant aliens will adversely affect the wages, working conditions, or benefits of similarly employed U.S. workers or if the employer does not provide proof of workers' compensation or equivalent insurance.

However, if it is discovered that a sufficient amount of U.S. workers is not available,* there is no adverse effect, and the employer provides workers' compensation, the RA is directed to certify the application. The RA must notify the employer of denial or certification at least twenty days before the need. If certified, the employer is required to file a visa petition to the INS for the H-2A visas for the admittance of the incoming H-2A employees. Employers are charged a \$100 application fee, plus \$10 per job offer, not to exceed \$1,000 in total.

Responsibilities of the H-2A Employer

To ensure that U.S. workers are preferred over nonimmigrant aliens, U.S. workers are not adversely affected, and the H-2A workers are protected once the nonimmigrant, seasonal or temporary employees are admitted, the employer must comply with certain assurances once the H-2A employees are certified and employed.

Wages

The pay for U.S. workers and H-2A workers of similar occupation must be equal. The wage rate must be the higher of the respective state's Adverse Effect Wage Rate (AEWR), the prevailing wage rate for the respective area, or the federal or state minimum wage.

The AEWR is equal to the annual weighted average hourly wage rate for field and livestock workers combined for the region as published by the U.S. Department of Agriculture⁺ which all states follow including Ohio. The prevailing wage rate for an employee performing any given job is basically set to the wage that the majority of employers in the area of similar business and size pay an employee for a similar job. It has been common practice in Ohio to have the prevailing wage set at the AEWR since no employers have requested the calculation of a separate prevailing wage. Ohio's minimum wage is currently the federal rate of \$5.15/ hour.

Housing

All employees who cannot reasonably return to their residences the same day must be provided with free, inspected, and approved housing. H-2A employers should schedule an inspection of the housing with the Wage and Hour Division of the U.S. DOL at least 30 days before the need. This housing is required to meet Occupational Safety and Health Administration (OSHA) and local housing standards. Even though employers must provide this housing free of charge, they are permitted to charge the employees for resident damage.

Meals

The employer must provide three meals a day to each employee or, alternatively, provide convenient cooking facilities for employee-prepared meals. When the meals are provided, the employer may charge each employee a specified amount for the food.

Transportation

The employer must provide three types of transportation when applicable. First, the employer must reimburse the transportation and subsistence costs of the employee

* Note: This cannot be because of a strike or lockout.

⁺ See **Appendix II**

from the place of recruitment to the work site once the worker has completed 50% of the contract period. Second, the employer must provide transportation from the required housing to the work site, free of charge, for workers living in the required housing. And finally, the employer must pay for the worker's transportation and subsistence costs from the work site to the place of recruitment or the next job after the contracted work period is completed.*

Tools and Supplies

The employer must provide all necessary tools and supplies for the contracted job free of charge (unless the prevailing practice is for the worker to provide them). However, the employer may charge for damages.

¾ Guarantee

The employer must guarantee that the worker will be employed for ¾ of the work days contracted. In the case of insufficient work to realize this, the employer is required to pay the worker what he or she would have earned for working ¾ of the contract period. (The employer does not have to comply with this requirement if the worker abandons the job or is justifiably terminated.)

Workers' Compensation Insurance

The employer must provide all workers with workers' compensation insurance or comparable insurance that is at least equal to the respective state's compensation insurance. Proof of this insurance must be provided to the RA before an application will be certified.

Fifty-Percent Rule

The employer must hire any U.S. workers applying for the job offer up until fifty percent of the contracted period has elapsed provided that the applicants are willing, able, and qualified.

Records

It is a requirement for the employer to keep records of a worker's earnings (including any deductions from those earnings) and s/he must provide the worker with the complete statement of hours worked, earnings, and deductions on each check.

Frequency of Payments

Workers should be paid their wages at least twice monthly or more frequently if it is the prevailing practice.

Miscellaneous

Since H-2A workers are not eligible for the benefits under the Federal Unemployment Tax Act and FICA, these taxes are not payable by these workers. Also note that H-2A employees are not covered under the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA).

Violations and Penalties

The Employment Standards Administration (ESA) of the DOL is the primary investigator of the terms and conditions of this employment. This administration enforces the employers' contractual obligations and is permitted to assess civil money penalties, order employers to pay back-wages, place injunctions against future violations, and prohibit future H-2A participation.

* If the prevailing practice of employers in the same crop and labor market area is to advance transportation funds to potential workers, H-2A employers must also advance such funds.

PART II- THE ENVIRONMENT OF THE H-2A PROGRAM

Statistics of the H-2A Program

The United States began granting H-2A visas in 1987 following the passage of IRCA in 1986. Initially, the majority of the H-2A workers entering the United States, unlike the Bracero program, were from Jamaica. However, Jamaican participants have continually declined since the start of the program, offset by a continual increase in contracted Mexicans. By 1996, Mexicans accounted for 67.9% of the total of all H-2A participants. As such, the North American continent has consistently provided U.S. agricultural employers with the most H-2A participants (95.9% in 1996). The transportation costs to the work site that are required of the employer have undoubtedly influenced this statistic. However, the South American continent has had an increasing role in the program while employees of Europe and Oceania have been minimal (see *Table 1*).

*Table 1- H-2A Workers entering the U.S. by country (1987- 96)**

COUNTRY	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Barbados	416	312	263		60					
Dominica	100	100	110		23					
Dominican Republic			16	16	19	22	27	17	21	19
Jamaica	11,414	12,609	12,051	13,881	10,815	8,355	6099	5697	4231	4231
Mexico		2499	3,683	4,993	6,216	5,829	6655	7156	10,353	10,353
St. Lucia	562	565	580		209					
St. Vincent	552	550	620		290					
Other	67	29	38		81	23	16	34	14	14
Total, North America	13,111	16,673	17,361	18,890	17,707	14,220	12,794	12,897	12,257	14,617
Chile				53	53	81	73	57	72	70
Peru			116	140	198	277	308	294	341	383
Other			1	1	4	2	4			
Total, South America	0	0	117	194	255	360	385	351	413	453
United Kingdom	2	39	12	16	23	10	7	8	12	5
Poland			16	15	37	53	10	11	18	31
Other		62	72	38	23	12	9	10	19	19
Total, Europe	2	101	100	69	83	75	26	29	49	55
Australia			15	18	20	23	32	22	38	31
New Zealand			7	8	68	103	74	98	97	74
Total, Oceania	0	0	22	26	88	126	106	120	135	105
Total, Africa	0	0	0	1	0	2	4	14	3	2
Total, Asia	0	8	14	19	140	15	27	7	5	3
TOTAL	13,113	16,782	17,614	19,199	18,273	14,789	13,342	13,418	12,862	15,235

* Education and Human Services Division. H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers. U.S. General Accounting Office. Washington: Dec. 1997.

COUNTRY	Rate in % '96
Barbados	
Dominica	
Dominican Republic	0.1
Jamaica	27.8
Mexico	67.9
St. Lucia	
St. Vincent	
Other	0.09
<u>Total, North America</u>	95.9
Chile	0.5
Peru	2.5
Other	
<u>Total, South America</u>	3
United Kingdom	0.03
Poland	0.2
Other	0.1
<u>Total, Europe</u>	0.4
Australia	0.2
New Zealand	0.5
<u>Total, Oceania</u>	0.7
<u>Total, Africa</u>	0.01
<u>Total, Asia</u>	0.01
TOTAL	100

Despite the increasing role of Mexican participants in the early '90s, the total number of H-2A participants reached its all time low by 1996 (12,862). When the use of the program began escalating again after 1996, the DOL received 1,817 applications from employers, certifying 17,557 nonimmigrant aliens out of 19,853 requested. All these numbers have continued to increase until the present day. Last year (fiscal year 2000) 48,480 workers were requested from 6,356 requesting employers (see *Table 2*).

*Table 2- Regional Office and U.S. Totals in Fiscal Year 2000**

Regional Offices	Workers Requested	Workers Certified	Employers Requesting	Employers Certified
I- Boston	3458	3328	473	461
I- New York	2634	2624	190	190
II- Philadelphia Hub	4187	3864	871	852
III- Atlanta Hub	26,366	24,350	2555	2496
IV- Dallas Hub	4655	3864	415	361
IV- Denver Affiliate	1882	1254	673	472
V- Chicago Hub	1106	1027	80	66
V- Kansas City Affiliate	882	686	120	104
VI- San Francisco Hub	2069	1980	483	446
VI- Seattle Affiliate	1241	1030	496	450
TOTALS	48,480	44,017	6356	5898

* Kilbane, Grace A. 2000 H-2A Report (OWS Information Bulliten No. 03-01) Office of Workforce Security. U.S. Department of Labor. Washington: 3 Jan. 2001.

Ohio is a part of the Region V- Chicago Hub with Illinois, Indiana, Michigan, Minnesota, and Wisconsin. In 1996, Region V- Chicago Hub received almost the fewest applications with only about 500 workers certified. The Chicago Hub continued to receive the lowest numbers of applications received in 2000 with Region I- New York receiving the second fewest, over double that of the Chicago Hub. However, the Chicago Hub surpassed its Region V counterpart, Kansas City Affiliate, for workers requested and workers certified. The Atlanta hub led all categories in 2000 (see *Table 2*).

Within Ohio, horticultural employers requested over five times more employees than any other Ohio crop employer group with 487 employees requested and certified. However, these H-2A workers were requested by only 20 employers (see *Table 3*).

*Table 3- Ohio (Region V- Chicago Hub) Fiscal Year 2000 Crop Activity**

Crops	Workers Requested	Workers Certified	Employers Requesting	Employers Certified
Diversified Crop	20	14	3	2
Farmworker	11	11	1	1
Grain	1	0	1	0
Horticultural	487	487	20	20
Livestock	2	2	1	1
Stable Attendant	3	2	1	1
Tomatoes	11	0	1	0
Vegetables	72	72	5	5
TOTAL	607	588	33	30

In summary, North American countries have been and most likely will continue to be the origin of nearly all entering H-2A employees. More specifically, Mexico provides the majority of the current H-2A workers entering the U.S. Also, as will be discussed in a later section, this trend will most likely continue. Finally, one should notice that employer applications, worker requests, and worker certifications have been consistently increasing since 1996. In fact, last year's numbers were the highest in the history of the program. It should be noted, however, that the number of H-2A employees still remains an extremely small percentage of total U.S. farm employees.

Farm Labor Statistics

"Farm worker wages have stagnated, annual earnings remain below the poverty line, (and) farm workers experience chronic underemployment..."⁺

According to the Farm Labor Survey released Aug. 17, 2001 by the National Agricultural Statistics Service of the Agricultural Statistics Board (USDA), the U.S. agricultural industry employed 1,374,000 hired farm and service workers in July 2001. Thus, H-2A workers (44,017 in 2000) still make up an extremely small percentage of total farm labor employment.

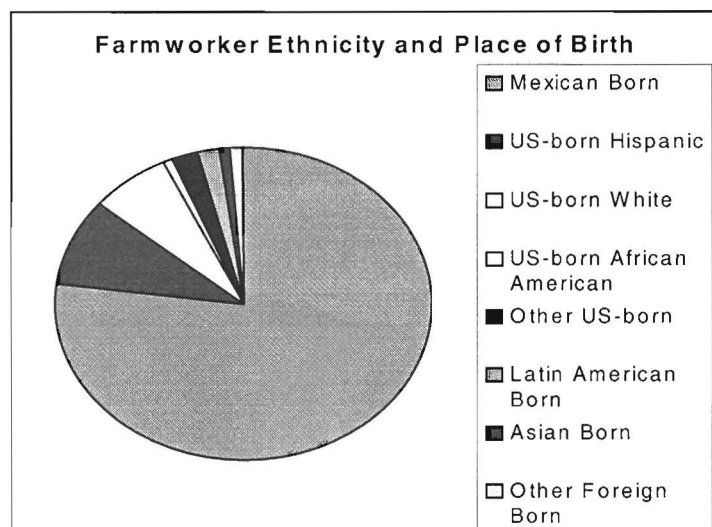
H-2A workers resemble total farm labor in respect to farm worker ethnicity and place of birth, however. According to the findings of the National Agricultural Workers Survey (NAWS) for years 1997-1998, the majority of farm workers (77%) were

* Kilbane, Grace A. 2000 H-2A Report (OWS Information Bulliten No. 03-01) Office Workforce Security. U.S. Department of Labor. Washington: 3 Jan. 2001.

⁺ Office of Program Economics. National Agricultural Workers Survey: 1997- 1998. U.S. Department of Labor. Washington. Mar. 2000. <<http://www.dol.gov/dol/asp/public/programs/agwork/report-8.pdf>>

Mexican-born. The next highest groups are U.S.-born Hispanics (9%) and U.S.-born whites. The remaining percentage of farm labor is made up of African-Americans, Latin Americans, other U.S.-born ethnic groups, Asians, and other foreign-born employees (see *Chart 1*).

*Chart 1- Farmworker Ethnicity and Place of Birth**



Unlike the H-2A program, more in-depth research has been conducted giving a more complete profile of all farm workers and their employment in general. The average age of farm workers is 31. Half are below the age of 29. Half are married. Men comprise 80% of the farm workers. Only half of the total are married. Consistent with the statistics of farm worker place of birth and ethnicity, 84% speak Spanish as a native language and only 12% speak English as a native language. Furthermore, only 1/10 of foreign-born workers are fluent in English. Farm workers can work in agriculture without fluency in English because of the unskilled or semi-skilled nature of most farm work. In fact, the average farm laborer has completed only six years of formal education. These facts help explain why farm wages and benefits remain low.

The most important correlation, if not cause of low farm wages and benefits, could be the high percentage of unauthorized (undocumented) workers in the farm labor pool. Referring again to NAWS '97-'98, 52% of the farm labor supply is reportedly ineligible to legally work in the U.S. This large amount of undocumented persons (assuming that many of them are still being hired despite their unauthorized status) may be creating a surplus in the farm labor supply. Such a surplus would drive down farm wages and benefits especially if many workers of the overabundant supply are of illegal status and thus have no rights to minimum wages or benefits.

In nominal terms, farm wages have increased from \$5.24 per hour in 1989 to \$6.18 per hour in 1998. This is only an 18% increase in nominal agricultural wages compared to a 32% increase in nominal wages for non-agricultural workers over the same

* Office of Program Economics. National Agricultural Workers Survey: 1997- 1998. U.S. Department of Labor. Washington. Mar. 2000. <<http://www.dol.gov/dol/asp/public/programs/agwork/report-8.pdf>>

time period. The trend is worse for farm laborers in real wages. In 1989, the average real wage of farm laborers was \$6.89 per hour. This rate fell to \$6.18 per hour in real terms in 1998, a loss of 11% of purchasing power. Because of this, 61% of farm laborers are living below the poverty line given that, on average, single farm workers earn less than \$7500 a year and families earn less than \$10,000 a year.

Benefits have also been declining for farm laborers. The '97-'98 NAWS reports that benefits such as Medicaid, food stamps, and other social services have been consistently declining in the last decade. More specifically, only 5% had health insurance, only 20% were covered under unemployment insurance, and only 10% received vacation time. To make the situation worse, less than 50% of these farm laborers owned a vehicle of transportation and the statistic of 1/3 of farm laborers owning a home in 1994-1995 has fallen to only 14% of farm laborers with home ownership in 1997-1998. Even though 21% of farm laborers received housing costs paid for by the employer, it is still not surprising that many farm workers live in substandard housing (or no housing), and in poor sanitation. However, workers still move to where the jobs are as up to 56% of farm laborers are migrants. This could very well be another indicator of the effect of illegal agricultural workers on the farm labor work force as undocumented persons from foreign countries would typically be more mobile than domestic workers given their illegal status and needs.

Illegal Aliens, the INS, and the SSA

Illegal aliens in the U.S. are defined as those persons entering or residing in the U.S. without legal authority or permission. The hiring of illegal aliens is the employment of persons not legally permitted or eligible to work in the U.S.

Illegal immigrants come from two sources. The first source is those citizens of other countries crossing the U.S. border into the U.S. illegally. The second source is those citizens of foreign countries granted temporary permission to live and/ or work for a specific period of time in the U.S. (nonimmigrants) but remain in the U.S. after their legal time period has expired. Nonimmigrants are granted U.S. admission as either temporary workers or trainees, exchange visitors, intra-company transferees, or NAFTA workers. As stated in the previous section, Mexico provides more temporary workers and trainees than any other country.

In 1998, 30.1 million visitors were admitted for temporary residence in the U.S.* Some of these nonimmigrants will ultimately be naturalized (the conferring of U.S. citizenship, by any means, upon a person after birth). However, many will remain illegally in the U.S. after their legal residence period has expired, especially those temporary agricultural workers of the H-2A program.

The INS estimated that about 5 million illegal immigrants (with a range of 4.6-5.4 million) were residing in the U.S. by 1996. This 1.1 million increase from the October 1992 estimation implies an annual growth of 275,000 illegals. If this trend has remained consistent over the past 4 to 5 years, the current illegal population should be over 6 million people or over 2% of the U.S. population*.

* Office of the Assistant Secretary for Policy. 1998 Statistical Yearbook of the INS. Immigration and Naturalization Service Washington: Jan. 2001.
<<http://www.ins.usdoj.gov/graphics/aboutins/statistics/1998yb.pdf>>

Of the 5 million illegals residing in the U.S. in 1996, it was reported that as many as 2.7 million (54%) of them were from Mexico (see *Table 4*). Overstays of temporary permits constituted 41% of the illegals but only 16% of the Mexican illegals were a result of overstays. Therefore, the majority of Mexican illegals must be from illegal border crossings.

Given that the majority of illegals are from Mexico, it can be inferred that the source of most of the illegal immigrants in the U.S. are from Mexicans crossing the U.S. border illegally. In respect to the residence of illegals in the U.S., the states of California and Texas not surprisingly are estimated to house the majority of illegals with 2,000,000 and 700,000 respectively in 1996 (see *Table 5*).

*Table 4- Origins Estimated Illegal Immigrants in the U.S.**

Country	Estimated Illegals in U.S. '96
1. Mexico	2,700,000
2. El Salvador	335,000
3. Guatemala	165,000
4. Canada	120,000
5. Haiti	105,000
6. Philippines	95,000
7. Honduras	90,000
8. Dominican Republic	75,000
9. Nicaragua	70,000
10. Poland	70,000
From all countries combined	5,000,000

*Table 5- Estimated Illegals in Top Ten U.S. States**

State	Estimated Illegals '96
1. California	2,000,000
2. Texas	700,000
3. New York	540,000
4. Florida	350,000
5. Illinois	290,000
6. New Jersey	135,000
7. Arizona	115,000
8. Massachusetts	85,000
9. Virginia	55,000
10. Washington	52,000
All states combined	5,000,000

INS Enforcement

The INS has the responsibility for the enforcement of U.S. immigration laws. This includes the arresting of aliens violating the Immigration and Nationality Act residing illegally in the U.S. The INS attempts to control the illegal immigrant

* Office of the Assistant Secretary for Policy. 1998 Statistical Yearbook of the INS. Immigration and Naturalization Service Washington: Jan. 2001.
<<http://www.ins.usdoj.gov/graphics/aboutins/statistics/1998yb.pdf>>

population by preventing entrance to those trying to enter the U.S. illegally, and arresting those who were once legal to work and reside in the U.S. but have overstayed their permit (visa) and are now of illegal status. In 1998, the INS apprehended 1,679,439 illegal immigrants in the U.S. The Border Patrol, in cooperation with the INS, arrested 1,555,776 people attempting to cross the border illegally. Consistent with the estimation that much of the illegal population in the U.S. is from Mexicans crossing illegally, the border patrol reported that 97% of its arrests occurred at the Southwest border of the U.S.*

The hiring of such persons with ineligible (i.e. undocumented, illegal) work status is illegal under U.S. law. However, U.S. employers, knowingly or unknowingly, consistently hire undocumented workers. Agricultural employers, for example, consciously hire undocumented workers because the labor is cheaper and perhaps unavailable legally. Employers unknowingly hire ineligible workers because applying undocumented persons present fraudulent documentation to the employers fooling the employer into believing that he or she is legally allowed to work in the U.S. Conscious or not of their ineligible status, U.S. employers of undocumented workers are in perpetual danger of being caught by the INS through onsite enforcement (raids). Even though INS onsite enforcement decreased before 1997, the INS has recently increased its efforts to crack down on illegal employment through onsite enforcement (see *Table 6*). Although most work-site arrests result from the INS tracking down illegal immigrants who have committed a crime (86% of those arrested), all employers employing undocumented labor run the risk of being caught by the INS and incurring costly fines, losing crucial labor at crucial times, and/or losing the business.

*Table 6- Number of INS Worksite Enforcements By Year**

Year	Number of Enforcements
1992	7053
1995	5283
1996	5149
1998	7795

Eligibility Verification

I-9 Form

The IRCA of 1986 created the employment verification process, which includes the I-9 form. All new employees of any U.S. employer must fill out this form before or on the first day of work. Employers must submit the form to the INS within three days of the first day of employment. Upon filling out the I-9 form, employers must verify the employee's identity and work eligibility.

Problems with hiring unknown illegals arise from this verification process. Employers are required to accept all documents conferring identity and eligibility if the employer can honestly say and reasonably believe that the documents are authentic. Employers are therefore susceptible to accepting fraudulent documents as authentic documents, thus ignorantly hiring illegal employees. Furthermore, the INS currently

* Office of the Assistant Secretary for Policy. 1998 Statistical Yearbook of the INS. Immigration and Naturalization Service Washington: Jan. 2001.
<<http://www.ins.usdoj.gov/graphics/aboutins/statistics/1998yb.pdf>>

allows employers to accept eight different documents proving both employee identity and eligibility, 12 proving just identity, and seven proving only eligibility. Employees may choose which of these acceptable documents they wish to use to prove identity and eligibility without the discretion of the employer. The most common documents used to prove identity and eligibility, however, are birth certificates, drivers' licenses, and Social Security Cards, which are documents not controlled by the INS. Therefore, unlike INS documents, these documents not controlled by the INS cannot be proven authentic through the verification program.

Birth certificates are the most common document to prove U.S. citizenship. However, there is no national standard for the birth certificate format, making this document very vulnerable to fraudulent production. It is much more difficult to create a passable fraudulent driver's license than a fake birth certificate. Illegal immigrants, however, can obtain an authentic driver's license with a fake Social Security Card, since most drivers' bureaus do not verify Social Security Numbers before issuing licenses. Since driver's licenses prove identity and contain a Social Security Number, employers often use this document alone when verifying identity and eligibility. Therefore, employers are, again, vulnerable to unknowingly hiring illegal immigrants.

Fraudulently produced Social Security Cards (SSCs) are probably the most difficult to pass employer verification as a national standard does exist for authentic SSCs. The INS seized 24,000 fake Social Security Cards in Los Angeles alone in May 1998. However, due to a lack of employer training in recognizing fraudulent documents, many illegals are still able to gain employment with fraudulent documents, including false SSCs.

W-2 Form

Employers are also required to file W-2 forms to the Social Security Administration (SSA) for all their employees by the last day of February (last day of March if filed electronically) to report the taxes and wages for the past calendar year, especially when income, Social Security, or Medicare taxes are withheld. The Social Security Number and name of the employee must be correct on the form as the SSA does not post the employees' wages and taxes until both are verified. To prevent problems after the W-2's have been filed, an employer can verify the Social Security Numbers on the W-2 with the Enumeration Verification Service (EVS) as is with the I-9 form. Verification is free of charge when employers are verifying former, current, or new employees (after a commitment to hire). The SSA will use the EVS to verify the employee's name, Social Security Number, date of birth, and sex with the SSA master files.

There are a several ways employers can use the EVS depending on the number desired to be verified. To verify up to five employees, employers can call 1-800-772-6270 toll free on weekdays 7AM to 7PM EST. To verify up to 50 employees, employers can submit the name, Social Security Number, date of birth, and sex of the employees on paper or diskette to the local Social Security office. Verifying over 50 employees requires a registration process. With all methods of verification, the employer is required to disclose his or her Employer Identification Number (EIN). Employers are encouraged to use the EVS before submitting W-2 forms, as there is a \$50 penalty to both the employer and employee by the IRS (who uses the forms for tax purposes) if there is a mismatch between the W-2 and the SSA master files.

A noted mismatch, however, does not necessarily indicate the employer hired an undocumented worker during the previous calendar year. Mismatches could simply have resulted from name changes, payroll record transcript errors, typographical errors, incomplete or blank names reported, incomplete or blank Social Security Numbers reported, etc. However, the prevailing opinion and nationally accepted practice is that the Privacy Act does not prohibit the employer from using the mismatched information to comply with obligations under INA (e.g. the I-9 form). In other words, the employer must discover the reason for the mismatch once he or she is knowledgeable of the mismatch. If the mismatch is a result of hiring an undocumented worker, the employer will be in violation with the INS if he or she continues to employ the undocumented worker. High year-to-year turnover of undocumented employees in agriculture is a logical result of these policies.

Attempts by the INS to Reduce Fraud

Due to the fact that employers unaware of the employees' eligibility are continually hiring many undocumented workers, the INS has attempted to reduce the employing of undocumented workers through different verification methods that check the authenticity of employee presented information and documents. The implementation of the EVS, previously mentioned, verifies that the Social Security Number presented by the employee on any document is correct. The passage of the Illegal Immigration Reform and Immigration Reform Act (IIRIRA) of 1996 cut the number of documents the employee can present to the employer in half (Sec.274a). This legislation proposed a new employment reverification form, and prompted the SSA to develop a new Social Security Card prototype less susceptible to fraud. The legislation also directed the Secretary of Transportation to establish federal standards that must be met by state-issued driver's licenses (e.g. standards for establishing the true identity of the applicant or verify the applicant's account number), and directed the Secretary of Health and Human Services to deal with the vulnerability of birth certificates to be fraudulently produced because of the lack of a national standard.

The INS is also trying to establish an onsite electronic verification system to instantly verify employee information. Such a program has yet to be established, however, because of the cost to create it and the lack of employer participation. Unfortunately for employers, the INS's other attempt to curb the hiring of illegals has been a move toward increased work site enforcement (raids). Although it is too early to determine the pattern of implementation by the INS or the effects of the increase of work site enforcements, employers now fear more than ever legal sanctions against them for employing undocumented persons. This is especially true in the agricultural industry, as employers are more vulnerable and more inclined to hire illegal immigrants due to the temporary/seasonal nature of the work and the strenuous, low-paying jobs it offers that are unattractive to legal domestic workers.

PART III- REFORM OF THE H-2A TEMPORARY AGRICULTURAL WORKER PROGRAM

Reasons for Reform

The U.S. agricultural industry, for the most part, produces primary commodities in global competition. This competition, cost increasing U.S. laws and regulations, the physical demand of agricultural work, and the seasonal aspect of the work keep the wages and benefits of agricultural labor low. Therefore, many domestic workers, unwilling to work in the agricultural industry, choose work in industries with higher pay, less physical demands, and year round employment. Therefore, agricultural employers have come to depend on the illegal labor supply to meet their labor needs.

The reliance has several consequences. First, agricultural employers fear INS prosecution if they are found to be knowingly employing ineligible workers possibly resulting in the loss of an entire year's crop, costly fines, imprisonment, or the shutting down of the business. Second, relying on illegal foreigners only encourages more aliens to enter the U.S. illegally in search of work. As a consequence, the trend of declining farm wages and benefits continues for U.S. and legal alien workers. Further more, employed illegals are subject to many dangers crossing the U.S. border illegally, and abuse and exploitation by their U.S. employers since U.S. law does not cover them. The H-2A program was established to provide agricultural employers with a legal and stable labor supply so employers would not be tempted or forced to hire illegal immigrants. Yet, few agricultural employers actually use the H-2A program.

Employers avoid the program because it is complicated and confusing to use. Employers have received poor information about how to use the program and how to apply. The DOL handbook created to relate this information is outdated and incomplete. Filling out the application for H-2A employees is only the beginning of the confusion for employers. Using the program can be just as confusing and cumbersome. Employers must comply with multiple requirements to multiple agencies. Employers many times are unable to determine if they are in compliance with not only the requirements and agencies at the federal level, but also those at the state and local levels. Like the Bracero contract, the writing of the program is very vague leaving employers to question what constitutes a "prevailing practice", for example.

Second, the program is extremely slow. In its Report to Congressional Committees in December 1997, the General Accounting Office reported that over one-third of the DOL's certifications of applications were late (past the 20 day before need deadline). Some were not even certified or denied before the actual date of need. To make this situation worse, the DOL does not keep records in respect to the time of certification or why a certification would have required additional time, which impedes efforts to remedy the situation. Delays could be explained through the extent of time needed to test the market for sufficient workers or adverse effects. Yet, these tests have been highly ineffective in achieving their goals thereby only adding to the long process of H-2A application certification.

Because the program is designed to encourage employers to hire U.S. workers over temporary workers, the program is terribly costly. The recruitment required by employers is very expensive, exhausts valuable time, and historically has proven very ineffective. The prevailing wage and AEWR are calculated by grouping together

dissimilar occupations resulting in a higher or lower wage in some areas than it should be. The housing, transportation, meals, etc. expenses (although included with good intention) are each of high cost to the employer. As previously mentioned, agricultural employers must compete globally disallowing U.S. employers to pass the costs from these U.S. regulations on to the consumer. These costs, in fact, make the program prohibitive to employers encouraging the hiring of illegal immigrants.

Despite the costs of these guarantees and benefits to the workers, the program is failing to provide adequate worker protection as well. First and foremost, H-2A employees are not covered under the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA). Even for the laws that do cover them, the workers typically do not understand the laws or are unaware of them (remember only one-tenth of farm workers are fluent in English). Finally, some of the H-2A worker protections are contradictory. The $\frac{3}{4}$ guarantee, for example, is not paid to workers eligible for this guarantee until after the work period. Yet, the law requires temporary nonimmigrant workers to leave the country immediately after the work period ends. Obviously, many recipients of this guarantee will not be able to receive their wages from the guarantee before returning to their country of origin. Once at home, these workers do not have the power or means to demand their due wages.

Given these detrimental faults of the program, agricultural employers are faced with a difficult dilemma. On the one hand, employers can attempt to use the H-2A program risking overestimating (therefore incurring more costs) or underestimating (therefore not having enough workers) the amount of labor needed (because they must estimate their need 45 days before the need), not receiving the labor on time, being in violation of the program out of ignorance, and paying high usage fees. On the other hand, agricultural employers can reject using the program and instead hire illegal employees or simply not find enough labor. This option carries the risk of losing labor (possibly at the time of peak labor need, i.e. harvest time) and being sanctioned with fines, jail time, and/or the shutting down of the business by the INS.

Therefore, employers, their organizations, and sympathizing members of Congress have long demanded and worked for reform of the H-2A program or the creation of a better program to replace it. The goals of these reformers has consistently been to establish a stable and legal workforce, acquire qualified labor in a timely manner, and improve (if only to quiet their opposition) labor safety, working conditions, and worker protections with the ultimate goal of keeping agricultural employers globally competitive.

The Reform Bills

The AgJobs Bills

The first major bill introduced to Congress to reform the H-2A program was the Temporary Agricultural Worker Act of 1997. This bill proposed a 24-month pilot program that would allow the admission of temporary or seasonal agricultural workers similar to that of the H-2A program. It differed from the H-2A program in important ways, most notably a trust fund was to guarantee the return of the temporary workers to their home countries. Despite the proposed changes, the bill was not passed but was

reintroduced a year later as the Temporary Agricultural Worker Act of 1998 with the same outcome.

Despite failure of these bills, yet another reform bill was introduced by Sen. Ron Wyden of Oregon entitled the Agricultural Job Opportunity Benefits and Security Act of 1998 (AgJobs '98). This bill was designed to create a work visa program more efficient than the H-2A program. Its key provisions were the creation of a national system of voluntary registries of legal U.S. workers interested in farm employment, the streamlining of the admittance and the extension of stay of nonimmigrant agricultural workers to occupy the jobs registries were unable to fill, the use of market-based wages (different from the H-2A AEWR and prevailing wages), and the protection of the Fair Labor Standards Act.

Many thought this bill could establish a truly workable program. Despite bipartisan support, the bill was politically unattractive to labor unions, labor advocates, and Latino leaders. The bill ultimately failed because these interests demanded a legalization provision giving amnesty to all illegal immigrants not enumerated in the bill. Opponents also felt that the guarantees of the bill, like those of the existing H-2A program, did not provide sufficient protection against adverse effects to U.S. workers nor provide adequate wages, working conditions, and benefits for all workers.

In response, the agricultural employer organizations and their Congressional supporters reintroduced the bill in 1999 and 2000, AgJobs '99 (S.1814) and AgJobs '00 (H.R. 4056), with considerable adjustments (the AgJobs '99 and AgJobs '00 bills are identical so the following discussion pertains to both bills).^{*} The new AgJobs bill, introduced by Sen. Gordon Smith of Oregon, was "to establish a system of registries of temporary agricultural workers to provide for a sufficient supply of such workers and to amend the Immigration and Nationality Act (INA) to streamline procedures for the admission and extension of stay of nonimmigrant agricultural workers".

Unlike AgJobs '98, Title I[†] of AgJobs '99 ('00) was written for the adjustment of the legal status of illegal alien agricultural workers by the Attorney General in the U.S. This adjustment of legal status would be subject to specific requirements that would have to be met by the illegal alien desiring adjustment. They are as follows:

- 1) The alien must have performed agricultural work in the U.S. for at least 880 hours or 150 workdays (the lesser of the two) during a 12-month period prior to October 27, 1999.
- 2) The alien must apply for the adjustment by 12 months after the effective date of the bill.
- 3) The alien must be eligible under 212(a)(9)(B) of the INA (the current illegal status will not be held against the alien).
- 4) Legal status given to the alien will be for seven consecutive years but the alien can only reside in the U.S. for 300 days each year. (Exception for aliens who have acquired permanent residence, have a minor child born in the U.S. before enactment of the bill or those performing agricultural work more than 240 days a year.)

^{*} Because a lot of the current H-2A reform bills were heavily influenced by the contents of these two bills and the following one to be discussed, these three bills will be discussed in greater detail.

[†] Title I of S.1814 was actually added by the amendment of The Farworker Adjustment Act (S.1815) to the bill.

- 5) The alien can work anywhere in the U.S. but it must be in agricultural work.
- 6) The employer of the illegal alien must provide the work record to the alien and the INS.
- 7) The alien can become a permanent resident if the worker does a minimum work requirement in five to seven years. The requirement is a work period of 1040 hours or 180 days (the lesser of the two) a year, or work 240 days a year if the alien remains in the U.S. over 300 days a year. The alien must apply for permanent residence no later than six months after the five to seven years of completing this requirement. The alien can be deported if he or she does not meet this application requirement. Also, the Attorney General can deny permanent residence if the alien fraudulently acquired the seven year adjustment status or broke U.S. law during the adjustment period.
Note: Only 20% of those adjusted aliens would be granted permanent residence per year.
- 8) The alien has the burden of proof to show that he or she has met the work requirement for adjustment. The alien is permitted to ask for an outside party to aid the alien with this process.
- 9) The information can only be used for determining completion of adjustment requirements.
- 10) Section 101 or 102 of the INA does not apply to an alien seeking legal adjustment or permanent residence.

Title II of AgJobs '99 covers the Agricultural Worker Registries. Here, the Secretary of Labor would have the responsibility of creating and maintaining a registry system with a database of workers who want to work in the agricultural industry along with their employment status. The registry covers U.S. workers as well as eligible nonimmigrant workers with adjustment status. U.S. workers would have the priority over the adjusted nonimmigrants, however. Furthermore, adjusted nonimmigrants can only be referred to jobs they are qualified for and can be removed from the registry for six months the first time they fail to show up to the job they have committed to through referral and removed for a year upon failure to show up a second time. A registry participant will be removed from the database if the registrant declines three jobs referred to him or her within a three-month period. Finally, an employer may require all applicants for a job to register with the registry before hiring.

The next title (Title III) of AgJobs '99 ('00) covers the H-2A reforms. The H-2A reform under this bill begins with changes in obtaining H-2A employees. The first major change is that employers would be able to apply to the Secretary of Labor (SOL) for workers to fill the vacant jobs as late as 28 days before the need. The SOL then would have seven days to accept or reject the application along with notification to the employer equal to that under the existing H-2A program. If the application were accepted, the SOL first would immediately begin a search of the registry in an attempt to find ready, willing, able, and qualified registrants to fill the employer's job offers before admitting H-2A employees. If the SOL finds ready, willing, able, and qualified registrants, he or she would contact the chosen registrants about the job offer. If they accept, those registrants would be directed to the employer's worksite and the employer would be notified. The employer would have to hire these contacted registrants if they are qualified for the

positions offered. The registry search would continue for seven days before the need if the registrants contacted reject the offer or if enough registrants have not be found for all the jobs offered by the employer. H-2A employees would not be admitted unless not all the jobs are filled through the registry by the seven-day before need.

The next proposed reform to the H-2A program under this is employer requirements. First, the employer is given the liberty under this act to request a unique prevailing wage for his or her area subject to approval by the SOL. More importantly, this act introduces the option for the employer to offer its H-2A and registrant employees (only if H-2A employees are working there as well) housing equal to that of the existing H-2A program or a housing allowance. This housing allowance given to eligible employees would be equal to the statewide average fair market rental price for existing housing for non-metropolitan counties in the state of the employer's worksite determined by the Secretary of Housing and Urban Development, and the U.S. Housing Act of 1937 for two bedroom dwellings. This reform measure is designed to allow more agricultural employers to be monetarily eligible for the H-2A program by removing the high costs of building housing (for those employers without housing) to meet the existing H-2A housing requirement through this housing allowance option. Most of the other guarantees to employees required of the employer in this bill, including the 50% and $\frac{3}{4}$ guarantees, are nearly identical to those under H-2A. The transportation reimbursement transportation guarantee is not given to employees taking permanent residency less than 100 miles away from the worksite or if the employee is not living in employer provided housing (this includes the housing allowance).

The final section of Title III, Section 305, enumerates amendments to Section 218 of INA. This most important amendments to Section 218 under this act pertain to H-2A employee eligibility, period of admission, and identification. With these amendments, H-2A employees are disqualified from the H-2A program if they have violated the act or violated U.S. admission law within the past five years. H-2A employees can only remain in the U.S. for the lesser of the employment period or 10 months a year. However, the amendments allow the H-2A employee 14 days to find more work unless an extension for continued work is filed. Finally, Section 305 of AgJobs '99 ('00) would establish a new non-reproducible ID recorded in an ID system for H-2A employees.

Title IV of this bill covers miscellaneous provisions including complaint procedures, and employer violations similar to those established under the existing H-2A program with no pertinent discussion required here.

Opinions Concerning AgJobs '99 ('00)

When this bill was introduced by Senators Smith, Graham, and Craig, they and other proponents of the bill felt the act, if passed, would effectively serve agricultural employers, domestic laborers, and foreign laborers in the U.S. through its three parts: amnesty, registry, and H-2A reform.

AgJobs advocates believed that an amnesty program would be beneficial in several ways. First, they noted that the amnesty would be adjusting the most experienced and committed workers to legal status given the eligibility requirements. These adjusted workers would now receive protection under U.S. law as well. The amnesty would also serve as immigration control through creating a quantitatively sufficient (legal) workforce. Therefore, there would be a slim market for illegal immigration in effect decreasing

illegal entrance and the numbers of aliens exposed to the dangers of entering the U.S. illegally.

They believed the registry would add stability to this legal workforce. The registry would be highly efficient and modern in connecting agricultural employers with potential employees. The SOL's search of the registry would eliminate inefficient, ineffective, and costly market tests and employer advertising required under the existing H-2A program.

Proponents also suggested that the worker guarantees in Title III of the bill were also of better quality than those established by the existing H-2A program. They boasted that with this bill, worker protections would increase (mainly through MSAWPA coverage not realized before) while a new more affordable prevailing wage would be established that would still offer employees a premium wage. Moreover, the acceptable guarantees from the original H-2A program would be unchanged by the bill, and those changed do not decrease the benefits to the employees (e.g. the new housing allowance would not decrease living standards).

Opponents of AgJobs '99 ('00), namely farm labor advocates and immigrant organizations, disagreed with these claims, however. Their opposition does not come from the argument that the existing H-2A program is already adequately securing descent wages, working conditions, and benefits for domestic and foreign workers in the U.S. and therefore reform is not needed. These groups, rather, feel that the current H-2A program is inadequate and should be improved. However, they felt that the reforms offered in the AgJobs bills did not meet worker and quite possibly could make things worse for agricultural workers.

Opponents first stated that the wages offered in the current H-2A program do not match the wage increases witnessed in other industries and do not move agricultural workers above the poverty line. Referring to the NAWS 1997-1998 and the review of the H-2A program conducted by the U.S. GAO done in December 1997⁺, the opponents of the AgJobs bills supported their argument with data showing that in the ten year period beginning in 1989, farm wages had only increased 18% in nominal terms compared to an average 32% nominal increase in non-agricultural wages. In real terms, farm wages have actually decreased 11%. This, the opponents stated, is the explanation for why the NAWS 1997-1998 reported that 61% of farm workers are below the poverty line. Therefore, they stated that no reform should be supported that could further decrease the income of farm workers.

Opponents to the AgJobs bills also expressed opposition to the working conditions and benefits offered by the bills. First, they claimed that the proposed housing allowance would put another unnecessary burden on agricultural workers eligible for the benefit with the possibility of only being able to acquire substandard housing with the allowance. Next, the opposition claimed that some of the other working conditions and benefits offered in AgJobs were written more vaguely than in the original H-2A program. They specifically commented on the meals and tools guarantee of the H-2A program that was neglected in the reform bill. They correctly expressed concern and fear that this vagueness and neglect could lead to further exploitation of agricultural workers by their

* See **Farm Labor Statistics** in Part II

⁺ Opponents to the AgJobs bills and the AOA bill, to be discussed next, consistently refer to these two pieces of literature.

employers through unnecessary fees for these items. Therefore, William Buchanan IV, President of the American Council for Immigration Reform, stated that for any reform bill to be supported, the guarantees offered in the bill must improve those of the original H-2A program optimally equal to those of other visa programs. Furthermore, Cecilia Munoz, Vice President of the Office of Research Advocacy and Legislation for the National Council of La Raza, predicted that this reform bill would decrease the economic and political power of agricultural workers at large. She argued that this economic and political power of farm workers is already quite weak not unlike their situation during the Bracero program (e.g. hindrance of unionization because of farm labor market saturation).

The opposition to the AgJobs bills by these organizations was not limited to wages, working conditions, and benefits. Opponents also expressed concern for the streamlining of the H-2A program allowing agricultural employers to more easily acquire immigrant temporary employees. Opponents already felt that perhaps the H-2A program is unnecessary. This argument stems from the 1997 GAO finding that there is an extreme over supply of farm labor in the U.S. and there is unlikely to be a shortage in the near future.^{*} The GAO report found that 13/20 of the large agricultural employing counties in the U.S. had annual double-digit unemployment in 1997 (see *Table 7*). Also, in June 1997 the GAO reported that 11 of these 20 counties had unemployment equal to double that of the national average (5.2% June 1997). In other words, extreme unemployment rates existed even during peak periods of agricultural employment. Analyzing these data, opponents of the AgJobs bills predicted that passage of either of these bills would only add to the surplus of labor and therefore unemployment.

*Table 7- June 1997 Unemployment Rates for 20 Counties With High Agricultural Employment**

County	June 1997 Unemployment Rate
Fresno County, Calif.	12.4
Imperial County, Calif.	24.6
Kern County, Calif.	11.4
Madera County, Calif.	13.4
Merced County, Calif.	14.1
Monterey County, Calif.	7.2
Riverside County, Calif.	7.2
San Diego County, Calif.	4.4
San Joaquin County, Calif.	10.8
Santa Barbara County, Calif.	4.1
Stanislaus County, Calif.	13.5
Tulare County, Calif.	13.9
Ventura County, Calif.	5.9
Collier County, Fla.	5.9
Dade County, Fla.	7.8
Hendry County, Fla.	19.5
Palm Beach County, Fla.	6.9
St. Lucie County, Fla.	11.6
Yuma County, Ariz.	32.7
Yakima County, Wash.	8.1

^{*} Adapted from GAO '97

State

California	6.3
Florida	5.2
Arizona	4.9
Washington	4.7

Country

United States	5.2
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Opponents also believed that a continuing increase in the surplus of labor would have more detrimental effects than just rising unemployment. An increasing surplus would, as seen during the Bracero program, help to decrease employee wages, working conditions, and benefits and ensure that they remain low to the benefit of employers. Also, the sheer increase to the population in high agricultural employment areas, because it is unneeded in terms of filling jobs, would only increase the overcrowding of schools in these areas (leading to an overall decrease in the education of the students) and urban sprawl which creates problems of its own. Furthermore, as Mark Krikorian, the Executive Director for the Center of Immigration Studies, eloquently projects, an oversupply of labor working for low wages will actually decrease farm productivity and competitiveness in the long run. A surplus of low paid labor, he claims, leads to inefficient production in that the surplus (again, as seen in the Bracero program) hinders the incentive to develop better and more efficient technology which historically has given U.S. producers advantages in the world market. In this view, to ensure the natural development of improving technology, the labor surplus in the agricultural industry needs to be curbed which most likely begins with the dismantling of agricultural foreign worker programs (i.e. the H-2A program) and the halting of illegal immigration.

Despite these concerns, reform advocates hoped that the amnesty provision would buy them a passage of AgJobs. Opponents, even though most support an amnesty, had problems with this part of the bill as well. Their main argument was against the requirements that undocumented workers would have to meet to be eligible for the adjustment of legal status. Opponents felt that the requirements would be very expensive and in effect would result in indentured servitude of the illegals desiring adjustment. They also remarked that it would be highly impractical for an illegal alien to produce authentic records showing completion of the work requirements. It would also be very cumbersome to keep these records. In addition, many employers might not have kept these records for their known illegal employees out of fear of discovery of illegal employment.

The main government opposition to the AgJobs bills came from the amnesty provision as well. Many Congressional conservatives outright oppose amnesty out of personal conviction, concern for the effects of an amnesty on the U.S. economy, and/or the correlation between granting amnesty and increased illegal immigration after such an adjustment of status as seen after the 1986 amnesty.

In conclusion, the proponents of the AgJobs bills discovered that many opponents not only opposed their proposed reforms but also questioned the acceptability of the existing H-2A program. The reformers had hoped that the amnesty provision alone would establish a compromise between the conflicting parties and secure passage of either bill. However, the amnesty advocates would not accept the conditions for amnesty

and some congressional members opposed any amnesty. Therefore, both AgJobs '99 and AgJobs '00 died in. The last major action of AgJobs '00 (H.R.4056) occurred in a House subcommittee on March 3, 2000. Likewise, the last major action for AgJobs '99 (S.1814) occurred in Senate subcommittees on May 4, 2000.

Agricultural Opportunities Act (AOA)

Despite the failure of both AgJobs bills by early May 2000, the agricultural employer organizations and their Congressional supporters introduced a somewhat similar bill in the House on May 25, 2000. This bill, introduced by Rep. Richard Pombo, was titled the Agricultural Opportunities Act (H.R.4548). The purpose of the bill was "to establish a pilot program creating a system of registries of temporary agricultural workers to provide for a sufficient supply of workers, to amend the INA to streamline procedures for the temporary admission and extension of stay of nonimmigrant agricultural workers under the pilot program, and other purposes". Title I of AOA was similar to Title II of the AgJobs bills. It calls for the Secretary of Labor to establish and run a system of databases containing eligible U.S. workers with their employment status that wish to be employed within the agricultural industry. Similar to AgJobs, the principle goals for this registry were to ensure that eligible U.S. workers know about job opportunities in agriculture, have priority in obtaining the jobs, and are referred to these job opportunities in a timely manner. Likewise, any eligible worker in the U.S. would be able to apply. With the AgJobs registry, an employer could not have an H-2A employee approved without applying to the SOL to search the registry in the respective state of the employer for potential registrant (U.S. worker priority) workers. In the AOA, alternatively, Title I would add Section 218A to the INA stating that employers could not have *H-2C employees* approved unless the registry is searched in the same fashion. H-2C employees would be those nonimmigrant employees hired under the H-2C program.

Title II of AOA creates this H-2C pilot program by amending Section 101(a)(15)(H)(ii) of the INA. Similar to the H-2A program and its potential changes offered in the dead AgJobs bills, aliens would be admitted under this program if they have not violated the H-2C program or U.S. law in the last 5 years. Those admitted could reside in the U.S. only for the period granted by the visa, and would receive an ID and employment eligibility document (the ID system seen in AgJobs) besides the visa.

Provisions of this new program are once again nearly identical to that of the existing H-2A program and its hopeful reforms in the AgJobs bills. For example, employers could not obtain H-2C employees if the job opening is the result of a strike or lockout, employers could not refuse registry referrals (if they are qualified), and employers would have to post items advertising the registry in the workplace if he or she uses the registry. Likewise, an employer could apply as late as 28 days before the need, the SOL would have seven days to accept or deny the application, the SOL would have to begin an immediate search of the registry after acceptance, the search must be completed by seven days before the need, and H-2C employees would only be admitted to fill those jobs the registry could not. In effect, the eligibility for H-2C workers, the registry search, registry referrals, and the issuance of visas is basically equal under the AOA and the AgJobs bills. In reality, the only difference is that AOA establishes a "different" program labeled H-2C as opposed to H-2A.

Not surprisingly, then, the employer requirements (employee guarantees) enumerated in Title II of AOA are nearly the same as those under Title III of AgJobs '99('00) including the eligibility for employers to request a unique prevailing wage calculation for their respective area of the state, the housing allowance option (and its amount), and the transportation reimbursement. However, it must be noted that the AgJobs bills were a direct reform of the H-2A program. The AOA was not. This bill would have established an entirely new temporary agricultural worker program (H-2C). Therefore, if one of the AgJobs bills had passed, the employer requirements not mentioned by AgJobs that are listed under the H-2A program would still have been in effect. Since AOA fails to enumerate the employer requirements of the H-2A program except for the ones the bill tried to reform, those unlisted H-2A requirements would not be guaranteed under the new H-2C program if passed. A final note must also be made that the AOA did not originally contain an amnesty provision like Title I (S.1518) of the AgJobs bills.

Opinions Concerning the AOA

Like the AgJobs bills, AOA supporters believed that the registry under this bill would solve many of the problems caused by the H-2A program. The employer requirements to use the registry to obtain U.S. or H-2C workers would be cheaper, more efficient, and much quicker in finding willing, able, and qualified workers allowing employers to request workers closer to the date of need (and therefore more accurately). The intent was to create a simple program with less bureaucracy. Therefore, supporters believed the registry under this bill would establish a legal, stable workforce while securing priority and better protections for U.S. workers. They felt alien agricultural workers would also benefit through easier attainment of temporary visas (H-2C visas in this case). All workers, they claimed, would also receive good wages, and allow more employers to participate by eliminating the fixed costs of onsite housing and eliminating the "not in my backyard" opposition by neighbors of the worksite with the housing allowance. AOA supporters envisioned that the efficient use of this program would discourage illegal immigration and therefore reduce the number of individuals who are exposed to the dangers of crossing the U.S. border and working illegally.

However, opponents of this type of reform quickly united against AOA just as with the AgJobs before it. They stated that giving SOL only 14 days to find enough willing, able, and ready U.S. workers through the registry is inadequate time. Also, they argued that the registry would excuse employers from actively recruiting workers and permit them to refuse to hire U.S. workers who were not in the registry. These factors, opponents said, contradict the assumption of U.S. worker priority.

Opponents also attacked the employer requirements in much the same way they attacked those under AgJobs. The elimination of an AEWR and the implementation of a 'to-be-determined' prevailing wage for the H-2C program would only ensure lower wages than those offered in the H-2A program (which are already low). Likewise, the option for a housing allowance would decrease living standards below the H-2A program standards.

These opponents also criticized any reform that, according to their arguments, would easily increase the number of agricultural workers in the U.S. As with the AgJobs bills, opponents referred to the NAWS 1997-1998 and GAO December 1997 findings

that reported that there is already a surplus of agricultural labor in the U.S. causing the fall of farm wages in real terms, extreme underemployment, a decrease in weeks worked, an increase of farm workers below the poverty line, and decreased unionization*. Opponents claimed that the passage of the AOA would not only exasperate these problems but also would increase the problems of overcrowded schools, urban sprawl, and the suppression of agricultural technology development. In their final argument against the AOA, opponents presented the argument that an increase in nonimmigrant workers in the U.S. (as possible through this bill) would establish more U.S. connections for Mexicans that in turn would lead to increased illegal immigration.

Therefore, opponents felt that the AOA would actually suppress and decrease worker protections, wages, and working conditions, while increasing illegal immigration. And finally, it failed to include the appealing amnesty provision. Wishing to avoid the fate of the AgJobs bills, the AOA advocates teamed up with worker advocates, and the government to amend the AOA so it could pass before Congress let out in December 2000. The three groups eventually found a consensus to a greatly amended AOA bill. The significantly amended AOA, now including an amnesty provision, was then reintroduced to Congress.

Despite the new amnesty provision (which helped kill the AgJobs bill) there was great optimism that the bill would pass before the end of the Congressional session. Opposition against the amended bill came late and unsuspected, however. Senate Majority Leader Trent Lott, previously believed to be a supporter of the amended AOA, disallowed the bill to be filed. This killed the bill and concealed exactly what the amended bill actually contained except to those who helped write the amendments.

The late action of Senate Majority Leader Lott was a result of the opposition to the amnesty from President Bill Clinton and conservative members of Congress. Sen. Phil Gramm, heading the conservative congressmen opposing amnesty, stated that he wanted to avoid the repercussions of an amnesty like those seen in 1986 and that he or his colleagues would never support any reform bill with an amnesty provision.

Other Reform

The discussion of H-2A reform until this point has been concerned with the reforms most employers and employer organizations have desired as well as the bills they have tried to push through Congress. However, it should not be assumed that the opponents to the AgJobs bills and the AOA feel that the current H-2A program caters to their desires and should not be reformed. Many of these opponents think the H-2A program needs reforming too although differently than that presented in the previously discussed bills. In fact, there are some organizations, like the National Council of La Raza (NCLR), that desire outright dismantling of the H-2A program. At this time, it is quite impractical for NCLR to gain support for their position. However, organizations like NCLR and other groups (like labor and immigration organizations) have outlined various recommendations for reform in what they believe will improve the operation of the program.

First and foremost, these groups promote more effective enforcement of U.S. and foreign worker protections under the program and U.S. labor law in general. Too many agricultural laborers do not receive certain guarantees due to employer exploitation or

* Refer to *Opinions Concerning AgJobs '99 ('00)*

ignorance. Currently, the government is not committed enough in enforcing the law and agricultural workers do not have sufficient economic and political power to collect the guarantees owed to them.

The next recommendation concerns the attractiveness of agricultural jobs. These groups state that increasing the accessibility to foreign workers is not the correct approach to securing adequate labor if there is indeed a farm labor shortage.* They believe the correct approach would be to make agricultural jobs more attractive to U.S. workers. This could be accomplished through employers offering higher wages, more benefits, better working conditions, and/ or longer working periods. This would encourage more laborers to work in the agricultural industry especially those U.S. citizens who are unemployed and/ or on welfare.

Along the same lines, these groups are calling for an improvement in the existing recruiting methods of U.S. workers for agricultural jobs. Like improving the attractiveness of agricultural jobs, better recruiting methods would allow farm employers to effectively acquire U.S. workers for most of their job openings in a timely manner. The DOL coordinating with labor organizations and supplying additional government funds to AgNet⁺ could also aid in connecting workers to agricultural employers effectively. Finally, a system of transportation for U.S. workers to help get them to the employer's worksite would improve getting workers to the work-site by the day of need.

The U.S. government has also issued recommendations in for H-2A reform. The most notable examples are the December 1997 recommendations offered by the GAO. The first GAO recommendation is to decrease the 60 day before need deadline for employers' H-2A applications to 45 days before the need. This could be accomplished by eliminating the INS verification of potential H-2A employees. The check is unnecessary and can add as much as three weeks in the application verification process. The Secretary of Labor can accomplish this task without sending the list of H-2A employees to the INS. Implementing this recommendation would decrease the bureaucracy associated with the program and speed up the verification process. Therefore, employers could file for H-2A employees closer to the need and more accurately calculate the workers they truly need.

The GAO also recommends that the $\frac{3}{4}$ guarantee of the program be revised. As previously mentioned the GAO discovered in its December 1997 report that many H-2A workers who are eligible for the guarantee were not receiving the funds owed to them. This was because employers do not have to pay the $\frac{3}{4}$ guarantee until after the work period ends. Yet, H-2A workers are required to leave the country immediately after the work period ends. Obviously, this results in some H-2A employees not receiving the guaranteed money.

DOL Response to Recommendations

The DOL has not been idle during the many sided H-2A reform debate. The department has made some improvements to the program in response to the recommendations and reforms proposed. The Employment and Training Administration

* Refer to *Opinions Concerning the AgJobs '99 ('00)/AOA*

⁺AgNet is a database registry with the purpose of connecting agricultural employers with U.S. workers. However, this particular system is regarded as out of date in respect to technology and methodology and is therefore quite ineffective.

(ETA) of the DOL, for example, heeded the GAO recommendation of changing the employer-filing deadline from 60 to 45 days before the need. Much less pertinent to the H-2A reform debate, the ETA also ruled that the inspection of employer provided housing could be conducted as late as 20 days before the arrival of the employer's workers that will be living in the housing. The ETA made other changes to the program including the modification of the requirement that employers must notify, in writing, the local State Employment Office of the exact date on which H-2A workers depart for the worksite, and proposed the change of transferring the adjudication authority concerning visa petitions for foreign workers from the INS to the DOL. These changes and proposals went into effect on July 29, 1999. On March 26, 2001, the DOL also acknowledged the employer complaints concerning the calculation of the AEWR and ruled to review the fairness and accuracy of the computation of the AEWR. The issuing of the 2001 AEWRs were, therefore, delayed for 60 days but have since been released. Finally, in April of this year the ETA stated that State Employment Service Agencies (SESA) would be established in each U.S. state for the reviewing and processing of H-2A applications. This is a decentralization from a centralized federal location. The ETA, again, hopes this action will help decrease H-2A application processing time. The SESA in Ohio can be reached at:

Ohio Dept. of Jobs & Family Services
145 Front St.
Columbus, OH
Phone: (614) 644- 7288

PART IV- CURRENT ISSUES

Mexico, the U.S., and U.S. Immigration Policy.

Despite the changes within the H-2A Temporary Agricultural Worker Program by the DOL, the program is still viewed as highly inadequate. One can postulate that these changes are only prolonging the inevitable: the passage of a large reform bill or the creation of an entirely new program.

There has been much recent talk between new presidents George W. Bush and Vicente Fox, of the U.S. and Mexico respectively, concerning the establishment of new U.S. immigration policy, including a new guestworker program, constructed under the guidance of both governments in the near future. Both presidents agree that something must be done to improve the current U.S. immigration policy and see this improvement as a key opportunity to better relations between the two nations.

Because of this, President Bush appears to be open to a new guestworker program and has promised reform of U.S. immigration policy but still seems quite unsure what either of these should entail or whom it will ultimately benefit. President Fox has been hastily pushing U.S. immigration reform in the fear that the U.S. economy may continue to slow down signifying less available jobs or room in the labor market for loaned Mexican labor. Presently, Mexico may need to create as many as 1.3 million new jobs a year to match its constantly increasing labor force*. Given this, the delay of immigration reform in a slowing U.S. economy (which may ultimately nullify any reform to increase the entrance of legal Mexican labor) could have detrimental effects on the Mexican economy. This would be especially true if the U.S. increased its efforts to thwart illegal immigration coming from Mexico.

Many are optimistic, however, that the U.S. and Mexican governments will establish appropriate reform to U.S. immigration policy in a timely manner. Since the turn of the new year, many U.S. and Mexican officials have been scheduling and holding various meetings to discuss what should be done about U.S. immigration policy and what should be included in the possible creation of a new guestworker program between the two nations. Some of the more influential officials engaged in these talks have been U.S. Attorney General Jon Ashcroft, U.S. Secretary of State Colin Powell, Mexican Foreign Minister Jorge Castaõeda, Mexican Interior Minister Santiago Creel, and Mexican General Rafael Macedo de la Concha. Secretary of State Powell and Attorney General Ashcroft have released a joint statement stating that, besides the work on a new guestworker program, the meetings with Mexico will focus on ideas of legalizing undocumented Mexicans in the U.S., border safety, the rights of U.S. employees, and cooperative labor enforcement.

The possible legalization of illegals has been given special attention and concern by those officials working on a new guest worker program. The Mexican side of the talks has lobbied very hard for the adjustment of status, especially from Presidente Fox. He recently was quoted saying, "I would like to work... toward... getting an amnesty for those (Mexicans) who are in the United States, who are servicing the U.S. economy, who are servicing the country even if they are legal or illegal." Within the U.S. borders, Latino and many religious leaders contend that Congress should approve a legalization

* Millman, Joel. "California Growers Ask U.S. to Admit Mexican 'Guest' Labor." The Wall Street Journal. 12 Feb. 2001.

provision for undocumented workers before creating any new guest-worker. In other words, these groups believe the consequence(s) of the failed H-2A program must be dealt with before hastily jumping into another guest worker program. "You have to legalize people here first, before you bring more people in from abroad," says J. Kevin Appleby, director of migration and refugee policy for the United States Conference of Catholics and Bishops.

Aids to President Bush are actually urging the President to back some sort of adjustment of status provision. Its passage would not only please the Mexican government bringing the two countries closer together but would please the U.S. Latino community. Thinking ahead to the presidential election in 2004, President Bush knows he will need the votes from this large minority group.

The White House announced that it would back a legalization provision but not a blanket amnesty. President Bush and his aids envision an adjustment of status occurring over a few years in which qualification criteria would include employment records, family ties, and the number of years residing in the U.S.* Despite many Democrats and immigration groups clamoring for the adjustment of all undocumented workers, Secretary of State Powell and Attorney General Ashcroft are currently stating that only undocumented Mexicans would be given the adjustment opportunity at first. Furthermore, the White House has also said that any adjustment provision would be a part of a broader guest-worker agreement, which it will closely work on with Congress and Mexico. The scheduled immigration talks in September 2001 between presidents Bush and Fox are extremely influential to the content of any future guest worker/ legalization legislation.

Challenges

As with the AOA bill killed in December 2000, there is much conservative resistance to any legalization provision (immediate adjustment or not) to be proposed in the near future. The Federation for American Immigration Reform, for example, has spent \$500,000 in advertisements condemning any new U.S. agreement with Mexico that would include an adjustment of status[†]. Sen. Phil Gramm of Texas, the conservative Congressman who blocked the passage of the AOA in 2000 because of its legalization provision, is again speaking out against any amnesty condemning the legalization talks between the U.S. and Mexico. Sen. Gramm and his conservative allies have promised that any amnesty or version of such will never pass in Congress. Furthermore, the reaction to the recent terrorist attacks (especially in respect to the increase of immigration enforcement) will undoubtedly postpone any amnesty agreement.

Unlikely Involvement

Despite Sen. Gramm's blunt opposition to the legalization of millions of illegal workers, he is not frowning upon other measures to improve the illegal situation. Often construed as an enemy to illegal Mexican immigration because of his resistance to amnesty, Sen. Gramm has recently admitted that the country must face the reality that there are illegal laborers in the U.S. and that the U.S. economy is dependent upon these

* Qualifications similar to those seen under AOA in 2000.

[†] Schmitt, Eric. "Bush Aids Weigh Legalization Status of Mexicans in U.S." The New York Times. 15 Jul. 01.

illegal workers. He has also commented that now is the opportune time to shift the treatment of all Mexican workers from that of abuse to protection. In his opinion, this can be accomplished through the establishment a new, effective guest-worker program, not an amnesty, where the only Mexican laborers in the U.S. are legal guest-workers whose rights and livelihoods are protected. Gramm says the work on such a program would simply “unite the U.S. and Mexico.”

Gramm's Proposal

Now more than just an outspoken supporter of immigration policy reform and a new guest-worker program, Sen. Gramm is currently working diligently in creating such a new program. The following are currently the key points to Gramm's guestworker program proposal:

- Participation in the program will be granted to adults for annual or seasonal labor on a year-by-year extension policy.
- Seasonal guestworkers who return to Mexico each year will be able to receive indefinite annual permit renewals.
- Those guestworkers who remain (legally by the permits) in the U.S. for the entire year may stay in the U.S. for up to three years but must return to Mexico after this period for at least a year before reapplying for a permit.
- Undocumented workers working illegally in the U.S. will have 6 months to apply for the program without fear of penalty and will automatically be accepted.
- Mexico will hold their own eligibility standards as well.
- Unique ID cards will be established for the program.
- There will be no limit as to the type of job a guestworker admitted through this program may perform.
- The DOL will apply the housing, working, and wage and hour labor laws for the program. Violators of these DOL regulations will be punished as if they had violated U.S. worker guarantees and will receive a ten-year debarment from the program.
- Employers must show a good-faith effort in recruiting U.S. workers.
- Guestworkers will receive all the same rights and privileges as all other workers.
- Penalties will be increased and enforcement will be heightened against those who continue to hire illegal employees after the inception of the program.
- The number accepted annually will be determined separately in each of 12 Federal Reserve Districts. The groups making these decisions within these districts will be composed of commissions of employer representatives, labor unions, and the federal government.
- This program will first only be established between the U.S. and Mexico.
- The permits granted under this program will not lead to the possibility of permanent residency status. All guestworkers must leave the U.S. when the contract period has been completed.

As previously mentioned, there have been many meetings and discussions between the foreign relations committees of Mexico and the U.S. concerning change in immigration policy. Sen. Gramm also has participated in discussions with Mexico and Presidente Fox. He and his four foremost supporting members of the Senate (Pete

Domenici (R) of New Mexico, Zell Miller (D) of Georgia, Jim Bunning (R) of Kentucky, and Mike Crapo (R) of Idaho) began meeting with Presidente Fox for talks about a new guestworker program in January 2001. However, it is still too early to tell when such a program would be brought before Congress for approval, when a consensus amongst its framers will be reached as to what exactly should be enumerated under the program, and whether President Bush and Presidente Fox will support Sen. Gramm's proposal without a legalization provision. Furthermore, there is domestic opposition to Sen. Gramm's new program that will undoubtedly make the passage of such a program extremely difficult before the end of 2001.

Opposition to President Bush and Sen. Gramm

Domestic opposition to Sen. Gramm's new guest-worker program proposal begins, not surprisingly, with U.S. labor unions and immigration advocacy groups. First, immigration experts have asserted that there has been little dialogue between the federal government and these unions or groups concerning a new guestworker program. More specifically, Cecilia Munoz, Vice President of the National Council of La Raza, has stated that President Bush has not spoken of the injustices in the current immigration law and the H-2A program that need to be corrected in a new program and immigration policy. Mark Krikorian, Executive Director of the Center for Immigration Studies, has also condemned the Bush administration because the cabinet does not contain an official on immigration and, therefore, the White House is ignorant to what should be done to improve U.S. immigration policy. Bruce Goldstein, co-director of the Farmworker Justice Fund, Inc. calls Sen. Gramm's proposal "worse than the Bracero Program" and claims that guestworkers will be "given status where they can't protect their rights." The entire Farmworker Justice Fund is condemning the Texas Senator's proposal as a program equal to indentured servitude.

Thus organized labor, in general, is not backing the Senator. These groups and their supporters, just as with the reform bills discussed previously, fear that the new guestworker program Sen. Gramm wishes to establish will be ineffective on a large scale, will lead to a second class caste in the U.S., will not protect the human rights of guestworkers, will make guestworkers vulnerable to exploitation (because of only a one year work period), and finally, as Sidney Weintraub from the Center for Strategic and International Studies in Washington postulates, will not hinder illegal immigration but mostly encourage it.

Sen. Graham, co-designer of the AOA reform bill, is also not supporting Sen. Gramm. Sen. Graham, who had his AOA bill blocked by Sen. Gramm in December 2000, argues that Sen. Gramm's program outline is not a true reform of immigration law and will highly resemble the current H-2A program and, therefore, will encounter many similar problems. Sen. Graham also criticizes the proposal because it does not contain an adjustment of status to legal residency provision, it will increase the fines to employers who hire illegal workers, and it will be useless to those employers who hire guestworkers from the Caribbean and Central America.

Despite the talks between the two parties, a stronger barrier to Sen. Gramm's ideal guestworker program could be, in fact, Presidente Fox himself who has dreamed of an 'open-borders' state between the U.S. and Mexico through the change of U.S. policy and a blanket amnesty for his citizens illegally working in the U.S. This amnesty could

legalize as many as 6 million illegal Mexican laborers, a figure double the number of illegals forgiven in the 1986 amnesty. This strikes fear in many U.S. lawmakers' eyes. These Congressional members frown on Fox's 'open-borders' proposal as a method of introducing an overabundance of Mexicans into the U.S. economy with damaging consequences. Also, many lawmakers, lead by Sen. Gramm himself, are very avidly against an amnesty as they feel an amnesty only rewards lawbreakers and encourages more illegal immigration. Sen. Gramm believes that economic freedom and increased opportunity in Mexico is the only answer to halting illegal immigration, not an amnesty. This inability for the two parties to see eye-to-eye on the legalization issue could further impede the introduction of Sen. Gramm's proposal to Congress.

Current Domestic Reform

Despite the hype of the negotiations between the U.S. and Mexican governments concerning changes to U.S. immigration policy and Senator Gramm's ideal guest-worker program, there have been various bills introduced in Congress this summer to reform the H-2A program. The first of these bills is the latest AgJOBS bill (S.1161) introduced by Sen. Larry E. Craig (R) of Idaho. This is an H-2A reform bill with two principal elements. First, it contains a section giving undocumented, illegal workers the opportunity to adjust to legal status with proof of working a certain number of days and hours over past specified seasons. Second, it contains a provision for the streamlining of the H-2A program. Rep. Howard L. Berman (D) of California and Sen. Ted Kennedy (D) of Massachusetts each have introduced a more liberal version of this most recent AgJOBS bill in their respective Houses listed as H.R. 2736 and S.1313 respectively.

These AgJOBS bills are extremely similar to their predecessors. However, many are optimistic that this version will escape the fate of the ones before it. Sen. Gramm, the White House, and the others within the U.S. government, who blocked the passage of the AOA bill last December because of its amnesty provision, have again stated that they will not support a bill with an adjustment of status provision (viewed as a veiled amnesty) and will exercise what power they can to block the passage of this updated version. However, Sen. Gramm was aided in his blockage of last year's AOA bill because it was introduced so late in the Congressional session. Supporters of the new AgJOBS bills believe that if an agreement on what exactly the bills will contain can be reached early enough within this Congressional session, neither Sen. Gramm nor any other congressional member will be able to block its passage assuming sufficient support outside the amnesty issue.

Therefore, the key to the passage of one of these AgJOBS bills in the 107th Congress is a timely agreement upon its contents. Yet, there still exists a debate between employers and worker advocacy groups upon certain points within the bills, especially concerning the wage requirement. Employers wish to erase the AEWR and simply institute a "prevailing wage" wage requirement (which would be substantially lower than the AEWR) while worker advocacy groups obviously are arguing for the highest wage possible for the laborers. Despite the controversy, however, both employers and work advocacy groups are confident that a compromise will soon be reached and, therefore, an AgJOBS bill streamlining the H-2A program and offering an adjustment of status to illegals will be past before the end of 2001.

PART V- IMMIGRATION : A MEXICAN PERSPECTIVE

Until this point, this work has specifically focused on U.S. political and economic history, policies, legislation, and problems in respect to the H-2A Temporary Agricultural Worker Program and immigration into the U.S. Like the majority of the U.S. political, and organizational participants in this issue, this work's U.S. paradigm has been exclusively one-sided to the U.S. perspective. However, despite the U.S. being the host for the H-2A program and possessing a stronger economy, it can not be ignored that Mexico, its history, its economy, and its perspective on immigration is just as important in understanding those laborers who come to the U.S. for work, and thus understanding what ethically should be done in respect to illegal immigration and in the creating of a new guest-worker program.

In respect to the U.S. perspective throughout history, Americans have always assumed that the majority of the Mexican labor force has been chronically poor and desperate for American jobs. Through its superiority complex, American society presumes that its hands are clean of the past Mexican economic instability, and that all Mexicans wish to come to the great northern nation, which obviously must be first-class to theirs. It is this shortsightedness that leads the U.S. to believe that it is able to acquire Mexican labor at will, that labor exploitation is somewhat justified, that we can treat all immigrants as if faceless, and that it can establish immigration programs with inadequate foreign worker protections. These assumptions, in part, have helped lead to the consistent framing of shortsighted, inadequate immigration programs including H-2A.

Historical Causes of Mexican Immigration to the U.S.

The history of Mexican immigration begins in the mid-19th century when Mexico was still in possession of the large northern territory now known as the southwest United States (California, Arizona, New Mexico, Colorado, Nevada, and Texas). The Mexican government, headed by the *caudillo* Gen. Antonio Lopez de Santa Anna, encouraged the settlement of this area by its citizens and even U.S. citizens (Texas specifically) as this region was sparsely populated. The settlement of U.S. citizens in the Texas region eventually led to an independence movement (incited by U.S. foreign policy) and the establishing of Texas as a separate nation. After its independence, the U.S. eagerly annexed the newborn nation despite war threats from Santa Anna's regime in 1847. The U.S. won the ensuing war and, as a consequence, kept Texas and stole (remember this a Mexican perspective) the remainder of Mexico's northern territory (in other words, the U.S. continued its imperialism through territorial expansion). Immigration restrictions for Mexicans entering into this newly acquired territory soon followed.

The second half of the 19th century, however, was marked by the extremely low immigration of Mexicans into this territory and the rest of the U.S. The country was busy internally, though, as the Mexican dictator Porfirio Diaz was actively developing the Mexican infrastructure (roads, railroads, etc.) and economy (specialization in primary commodities) using the U.S. as a model. The development led to a small upper class with the majority of the wealth and a large but poor lower class. *Latifundismo** especially hurt the large rural populations. Tensions built and eventually revolution broke out in

* *Latifundismo* is the concept referring to the establishing of large agrarian estates typically owned by a few privileged members of society.

Mexico in 1910. Two of the leaders of the revolution were Pancho Villa and Emilio Zapata both representing the rural peoples and their demands for land reform. The Mexican Revolution was extremely violent and bloody sending many Mexican to the United States in search of refuge and food. This pattern continued after the revolution as Mexico, despite its Agrarian Reform in its new constitution, was economically in ruins.

Immigration to the northern neighbor increased in 1917, as well, when the U.S. contracted Mexican labor to replace those sent to fight in Europe (some historians actually call this the First Bracero Agreement and the one mentioned previously as the second). Illegal immigration was also beginning to increase through this contractual opening of the borders. Now recognizing documented workers versus undocumented workers, the U.S. established the Border Patrol in 1921. However, the U.S. turned its back to the illegal immigration as the nation had an economical purpose for the illegal labor thereby (indirectly) encouraging it. When the Depression hit in 1929, the U.S. enacted a repatriation law deporting all illegal immigrants since they were no longer of any use in the American economy.

The Depression brought about economic changes in Mexico as well. During the beginning of the 20th century, developing countries, like Mexico, were still specializing in primary commodities and were thus highly dependent on the developed, industrialized nations (U.S. and Western Europe) as a market for their raw materials and as a supplier of finished goods. Therefore, when the developed countries' economies crashed, so did the dependent economies linked to them. To prevent a repeat of the tragedy, a group of Latin American economists, known as the *ceplistas**, promoted the implementation of the economic development model known as Import Substitution Industrialization (ISI). This model (implemented strongly from 1940 to 1970) was to transition the Mexican economy from one that produces primary commodities to an economy that produces finished products, again using the U.S. as a model, by establishing a domestic industrial base. As a result, Mexico would no longer be dependent upon the developed world's economies and, therefore, would not be vulnerable to another devastating depression.

The implementation of this capitalistic industrial- development model in a semi-socialist (at least in terms of agriculture) post- revolution Mexico resulted in dire consequences for the nation, especially for the *campesinos* (rural farmers). First, as Karl Marx explains in his law of population, the development or transition to a capitalistic, industrial society from a predominately agrarian one creates great regional disparities. As a result, there are to be great displacements of people to the points of development (industrial sectors) from the declining sectors of the economy (agriculture). Since Mexico at this time was predominantly a rural society based on agriculture, many *campesinos* were forced to migrate to the cities or to immigrate to the U.S. to find income.

Second, because Mexico was starting from scratch in respect to industrialization, the infant industries were unable to compete abroad. Therefore, the Mexican government was forced to implement various policies to protect and stimulate its industrial sector. Unfortunately, the majority of these measures (the *neolatifundismo*, price ceilings for food produced in the countryside⁺) were at the cost of the *campesinos*. Therefore, this

* The *cepalistas*, led by Rual Prebisch, were Latin American economists trained at the University of Chicago and were therefore heavily influenced by American capitalistic thought.

⁺ So that urban workers could buy food cheaper, their bosses could then pay them less, and ultimately the industry would be more profitable.

economic decline of the Mexican countryside (in combination with Mexico's growing population due to its place in its respective demographic transition) resulted in a larger exodus to the cities and to the United States.

The United States, encouraging Mexico's capitalistic endeavors, conveniently needed agricultural labor during its participation in World War II and thus employed income searching *campesinos* through the (Second) Bracero Program or illegally. Despite the programs termination in 1964, many Mexicans were still hired by agricultural employers illegally throughout the U.S. Surprisingly, the *Partido del Estado* or PRI, the Mexican party in power from 1930 to 2000, was well aware of the exploitation of its citizens working in the American fields, especially those who were illegal.

Unfortunately, like the U.S. government, the PRI played blind to the illegal immigration and the human rights violations by U.S. agricultural employers. The Bracero Program and illegal immigration to the U.S. was an extremely important "safety valve" for the PRI at the time. During this period (1950's to 1970's) the PRI continued to heavily promote ISI, which continued to remove job sources from the agrarian countryside. The young industries in the cities were not able to absorb all of the displaced *campesinos*. Because the U.S. economy was willing and able to absorb the labor, however, internal tension and possibly another Mexican agrarian revolution was prevented. Thus, the Mexican government did not want to "rock the boat" so it could continue with its capitalist industrial development.

Despite governmental protections, Mexican domestic industry did not become competitive abroad. The domestic market, composed mainly of underpaid industrial workers and poor *campesinos*, was not sufficient to counter the products non-competitiveness. The protection policies and financially supporting measures the Mexican government implemented on behalf of the industries eventually led to fiscal deficits, inflation, and large external debt. ISI implementation halted throughout all of Latin America when the Mexican government publicly announced that it could not continue repaying these debts. The ensuing debt crisis (The Debt Crisis of 1982) forced all world creditors to stop the easy lending of petro-dollars to Latin America and the countries therein were no longer able to finance their large government spending to keep ISI afloat. Restructuring of the Mexican economy began in the 1980's but not without dependency upon high capital nations like the U.S. Illegal immigration continued throughout the 1980's and was not decelerated by the Immigration and Nationality Act of 1986 despite its amnesty and the H-2A Temporary Agricultural Worker Program.

Personal Motives* to Mexican Immigration

Undoubtedly, economical causes initiated the Mexican immigration of *campesinos* to the U.S. since they were without work, land, and, therefore, without income for food. However, to say that an insufficient economy is the only cause or perhaps even the main cause of Mexicans crossing the frontier would be inaccurate. Although many Americans still assume that Mexican laborers come to the U.S. because there is no other option, the current trend is that more and more of the Mexican temporary workers, legal and illegal alike, are satisfactorily employed in their home country.

* Here I will use 'motives' to denote micro- personal reasons for immigrating to the U.S. as opposed to 'causes' used above to denote macro- structural (economic) reasons.

No later than the beginning of the (Second) Bracero Program, a strong dependency was established between the need of the U.S. economy for cheap (exploitable) labor and the Mexican need of employment. Toward the later half of the 19th century, the immigration gradually transformed into more of a tradition out of the dependency. As such, many Mexican laborers came to the U.S. to work for other reasons than income for food. Nowadays, it is quite common for a Mexican owning a large farm, by Mexican standards, with cattle, corn, wheat, etc., for example, to habitually work in the U.S. fields for extra income. There is an obvious disparity between the incomes one can earn in Mexico and that earned in the U.S. An hour worked in the U.S. is worth considerable more in dollars than an hour in Mexico.

As hinted at above, the extra income is used for many things besides supporting oneself and family. Many Mexican laborers return to Mexico with their incomes to pay off debts, educate themselves or their families, save, start a business, buy land, buy machinery or equipment for a farm or business, move up the social ladder, and/or improve their communities.

Work and money are not the only reasons for a Mexican today to come to U.S. either. Some Mexicans come to visit friends and family, learn English, learn a trade or skill, marry, verify or deny stories brought back by ex-workers, see the world, or simply undertake an adventure. The last example has become such a reality that adventuring to work in the U.S. is seen as a test of or passage into manhood for young men in some Mexican communities. Thus, one must realize that there are many personal motives for a Mexican to come and work in, say, a field picking cucumbers or in a restaurant washing dishes than just causative economics.

The Cross

Crossing the border legally from Mexico to the U.S. is relatively safe, quick, and orderly. However, with so many U.S. employers willing or ignorantly hiring illegal immigrants, Mexicans are encouraged to cross illegally. Unfortunately, as many immigration groups assert publicly and many more U.S. government officials and employers need to recognize, the illegal cross into the United States is difficult and very dangerous.

Most crossers hire *coyotes* (animals seen as wild and pesky by Americans but clever and sly by Mexicans), which charge a crossing fee in exchange for guidance to the other side. The crossers typically seek out a *coyote* recommended by relatives and friends. Contracting the wrong *coyote* could result in misguidance, theft, or even murder. There have even been instances when a Mexican parent will hire a *coyote* to carry the child to the other parent in the U.S. and the *coyote* will steal the baby and sell it to childless parents in the U.S. for a large sum.

Coyotes will typically lead their groups of immigrants on foot across the northern Mexico/ southern U.S. desert. The crossers are always in danger of being apprehended by the INS Border Patrol and must spend hours hiding. Because of this and geographical reasons, the trip is normally quite long (many times more than a week in length). Often the travelers relinquish their supplies of water and food, especially if they get lost, commonly resulting in death by dehydration.

Walking is not the only way to cross illegally, however. Some crossers are stuffed into trunks of cars and risk death by asphyxiation during the long trip. Some crowd

onto very old and very dangerous buses appropriately nicknamed “buses of death”. Finally, others acquire plane tickets and fly into the U.S., perhaps the safest method, but run a higher risk of being discovered upon arrival.

Life in the United States

Their Dreams

As emphasized previously, Mexicans come to the U.S. to work for many personal reasons well beyond concerns of finding their next meal. Americans tend to believe that since the U.S. is “the land of opportunity”, any incoming foreigners must undoubtedly be able achieve their dreams in paramount satisfaction. This is not the case. Many Mexicans, legal and illegal alike, discover firsthand that the United States is not what they had hoped and dreamed it would be. Thus, many say, “Nunca regresaria” or “I would never go back.” Numerous Mexicans, however, do find the U.S. to be the provider of their dreams and comment that their trip was, “fabuloso”^{*}.

The Work

This is not to say that immigrant Mexicans are simply given the answer to their desires. Harmonious with the saying, they are only provided with the opportunity. This opportunity is typically in the form of long, hard, physical labor, such as agricultural labor, for minimum pay. It is also not uncommon for these people to be exploited at the work place by not receiving adequate wages, not being informed (or being misinformed) of work-site dangers, and not given due worker protections and benefits⁺. Unfortunately, Mexican workers typically encounter similar mistreatment by the large farm and industry owners in their own country.

American Stereotypes

The lack of respect by U.S. employers and the U.S. as a whole towards immigrating foreigners (especially Mexicans) is at the heart of the work site mistreatment. The stereotypes of Mexicans in the U.S. are evidence of the ignorance that fuels this disrespect. The most common of these stereotypes is that the Mexican is lazy. Anyone who knows what many Mexicans must go through in the U.S. to earn a wage knows that this untrue. Other stereotypes state that Mexicans are drug- traffickers, criminals, and dangerous. Yes, some are. Yet so are other foreign immigrants of different countries and, in fact, U.S. citizens themselves.

The most popular stereotype of the Mexican worker is that Mexicans steal U.S. jobs. Once again, this is not very accurate. First, one must note that the U.S. would not have built the economy and, therefore, established the power it now enjoys if it were not for the hard work and sweat of immigrant workers of the past. Second, the U.S. still depends on immigrant labor, especially that from Mexico in the agricultural and

^{*} Davis, Marilyn P. Voces Mexicanas, Suenos Americanos. Mexico D.F.: Henry Holt and Company, Inc. 1993.

⁺ Here, I do not want to suggest that all U.S. agricultural employers disrespect and abuse their foreign employees. In fact, there are many employers who treat their foreign employees well and beyond the standard of ethical actions.

processing industries, to this day. In fact, there is an attitude in the U.S. towards some jobs as “Mexican jobs”. In other words, to except employment for this time of work is to lower oneself to the level of a Mexican. Perhaps this explains high unemployment in the agricultural areas of California during peak harvest season*.

Other Challenges

Crossing the border, work- site exploitation, and general disrespect are not the only hardships faced by Mexican immigrants in the U.S. today. Housing, for example, is often a challenge. To afford rent, many Mexicans will reside in a small dwelling and sleep side-by-side on the floor. There are also situations where immigrants, unable to find housing due to a lack of funds or discrimination, will construct make- shift houses out of discarded materials that resemble the housing one would see in the shanty towns of Sao Paulo or Mexico City.

The Mexican culture is challenged in the U.S. as well. The more the Mexican immigrants are exposed to the U.S. way of life, typically the more ‘Americanized’ they become. Eating habits are changed, spirituality/ religion is changed, and ideals of collectivism are replaced by individualism. Perhaps most notably, immigrant Mexicans learn how to be consumers. They begin shopping in supermarkets and buying modern conveniences like cars, washing machines, and microwaves.

Despite the conveniences of the U.S., many immigrants often develop nostalgia for their homeland and the longing to reunite with family and loved ones left behind. Despite the daily hardships encountered in Mexico, most immigrants love their homeland; perhaps a love more true and real than any American for the U.S. through the Mexican sense of community. To combat the loneliness, immigrants will begin starting families in the U.S. This runs great risks for illegal immigrants since they are in constant fear of deportation. As one undocumented Mexican who married in the U.S. stated in regards to deportation, “How am I going to leave my wife and children...? When you are married, the two people are one.”⁺

Those Left Behind

Those who leave to work in the U.S. are not the only Mexicans who endure hardships. The friends, families, and communities left behind face adversity: economically, emotionally, and spiritually. Because the majority of the immigrants are males, there occurs a serious change in the traditional family structure, labor roles, and psyche in the home communities of the immigrants. After the immigrants leave for the U.S. border, these communities resemble those during times of war. In other words, only the women, the elderly, and the young remain. There still remains a strong sense of ‘division of labor’^{**} within the Mexican culture. Therefore, when men leave to work in the U.S., there becomes a lack of hands in the fields that must be replaced by the women or contracted out to battalions of hired youngsters (typically comprised of male youths too young to venture to the U.S.). If the women undertake the work, this directly alters

* Refer to *Opinions Concerning AgJobs '99* ('00)

⁺ Davis, Marilyn P. Voces Mexicanas, Suenos Americanos. Mexico D.F.: Henry Holt and Company, Inc. 1993.

^{**} In simple terms, the men typically labor outside the home while the women are the caretakers within it.

the tradition of division of labor. If the young perform the work, the opportunity cost is their education. This undoubtedly would contribute to the under-education of males in these Mexican communities in combination with those young men who abandon school to work in the U.S. Although teachers in Mexico site that immigrating youth return with skills in the technical fields, such as mathematics, they do not receive the overall, well rounded education a youth should receive.

The Mexican community can drastically change not only when its members leave for the U.S., but also when they return home. Returning immigrants carry with them the foreign things to which they became accustomed to while in the U.S. This includes the English language, American music, American dress, American modernity, individualism, consumerism, and the concept of gangs.

As previously mentioned, the sums of money sent and carried back can change the community structurally. With their American income, the immigrants can invest in their communities through the installation of public works, the erection of new buildings, or the repairing of existing structures. The new construction bares with it the American architectural style. Houses and building in the communities begin to look more modern and have modern technology, especially in respect to communication, installed. The churches, as well, begin to adapt a more protestant appearance, more predominant in the U.S., from the traditional look of Mexican Catholicism.

Bringing these changes and the American experience, the returning immigrants become what is known as a 'subculture' within their home communities. Many have learned, at least partially, the English language, dress differently, and have created a sense of fraternity that only those who made the trip can relate to and enjoy. Despite their changes, the returned are perceived as heroes for their contributions to the communities and are rewarded with respect, prestige, and honor. However, they also receive respect from using their earned income in a capitalistic manner elevate themselves from the life of a poor *campesino*. Thus, the pride of hard, laborious farm work is decreasing in these communities, especially in the minds of its youngsters as they begin to value the advances of the returned immigrants. It appears nowadays, therefore, that only the seniors of the community still desire to fight for agrarian rights. As a consequence, the culture of the *campesino* is fading in response to this valuing of individual ascension reflecting American economic values.

PART VI- CONCLUSIONS

Even though H-2A reform, a new guest worker program, and/or any type of amnesty may be delayed or prevented because of the U.S.'s reaction to immigration control in response to the recent terrorist attacks, a few conclusions in respect to improving the H-2A program and U.S. immigration policy can be presented from the information presented.

First and foremost, one can postulate that there is an undeniable connection between the content and problems of the Bracero Program and those of the current H-2A Temporary Agricultural Worker Program. First, both programs contain vague provisions that contain words or phrases like "prevailing", "equivalent size/ occupation", and "active recruitment". The resulting consequences have been employer confusion about their requirements and the exploitation of foreign nonimmigrant workers. Second, the U.S. enforcement of the worker protections/ benefits and U.S. labor law was not sufficient during the Bracero Program and likewise with the H-2A program. Thus, foreign workers are susceptible to continued exploitation. Finally, the actual worker protections, benefits, and wages enumerated under both programs are inadequate. The nonimmigrant workers were and are underpaid for their strenuous labor, often don't receive the benefits owed to them, and are not protected under all U.S. labor and immigrant law. Therefore, unless the Bracero Program is no longer used as a model for the guest-worker program, these same problematic aspects of guest-worker programs will consistently reappear in a reformed H-2A program or in the construction of a new guest-worker program.

Unfortunately, it appears that past reform and much of the current H-2A reform are not addressing these issues but the issue of facilitating the access to foreign labor. However, a large increase in the use of the program (i.e. more legal H-2A guest workers) by employers does not indicate that the program would then be corrected. Reverting to the Bracero Program, despite the large number of Mexicans loaned to U.S. agricultural employers, one should not consider it a complete success due to its problems with, for example, employee guarantees (now redrafted in the H-2A program). Therefore, employer difficulty in acquiring guest workers is not the only problem with the current H-2A program.

This is not to say that inaccessibility (i.e. timeliness and affordability) is not a problem with the H-2A program. It has been such a deterrent that agricultural employers request fewer than 50,000 H-2A guest workers in 2000. As such, employers are turning to the employment of large numbers of illegal laborers thus encouraging more illegal immigration.

The failing of the H-2A program is not the root cause of great immigration of illegal immigrants, however. The phenomenon originated and was amplified through U.S. dependency on cheap labor to expand the agricultural industry and the Mexican need to secure jobs for its citizens during its industrial development. This dependency was established during the Bracero Program with the influence of American capitalism on the PRI and the Mexican economy.

As a result, the U.S. agricultural industry is progressing and broadening with the use of cheap labor (mainly from Mexico but also from other countries with 'high labor capital') as seen with other U.S. industries in South Korea, Southeast Asia, Eastern Europe and Latin America. However, the agricultural industry has one limitation that

other U.S. industries did not. Agricultural companies cannot move production overseas to the labor. Thus, the labor must be imported and a program, namely the H-2A program, regulating the entrance of this labor must be established. So if this program does not function well, employers will obviously turn to “importing” the labor illegally to continue taking advantage of developing countries “comparative advantage” in cheap labor. This has obviously been problematic.

Like other U.S. industries with operations overseas, the agricultural industry consistently has presented these workers with inadequate worker protections, wages, benefits, and working conditions. Also similar to other U.S. industries, many agricultural employers consider this exploitation quite justified, as they must be doing the employees a favor for hiring them to begin with. Fortunately, since the disrespected foreign labor is on U.S. soil, the nation can witness the inhumane results of these practices and become educated as to the true reality behind the immigration phenomenon.

The Mexican perspective illustrates that there exist strong causes and motives behind Mexican immigration above the stereotypes. Macro-economical causes, U.S. imperial expansion, U.S. economic and capitalistic influence, the resulting Mexican economic dependency, and the American self-interest to encourage or prosecute illegal immigration as economically needed have together helped to shape the current labor relationship between U.S. and Mexico. At a micro level, there exist personal motives for a Mexican to work in the U.S. above and beyond financial necessity; motives which Americans must recognize as extremely similar to their own economic intentions and aims. Furthermore, during their period of work in the U.S., foreign workers must leave behind friends and family, face significant obstacles and dangers, and face an entirely different society and culture all while working strenuous, monotonous jobs for minimal pay.

Witnessing the maltreatment of the foreign workers, the true reasons behind immigration, and the hardships endured by the foreign laborers, one would hope that any H-2A reform would establish better working and living conditions. However, immigration reform may be quite difficult given the three-sided debate among agricultural employers, labor organizations, and the U.S. government. The labor organizations heavily promote the reforming of the H-2A provisions that support these practices. However, it has been shown that in past reform bills these groups have accepted the absence of these reforms provided the bill included an amnesty provision. On the other hand, conservative legislators have not supported any type of amnesty.

Even if such a bill (streamlining the H-2A, amnesty, but no guarantee revision) did pass, would such reform facilitating employer access actually push employers to obtain temporary foreign labor legally as opposed to illegally? Perhaps not. The tradition of Mexican illegal immigration has become so strong that there will still be large numbers of illegal immigrants willing to work for a wage cheaper than their legal counterparts. Even if an employer could easily acquire an H-2A nonimmigrant worker within a short period at minimum wage, illegal workers will still be more quickly and more cheaply accessible. Undocumented workers are unlikely to be covered under most federal and state labor laws.

Perhaps the concurrent passing of an amnesty provision would officially and truly establish a surplus of labor within the agricultural industry leaving no room for illegal employment. Yet, the 1986 amnesty illustrated that an amnesty does not necessarily halt

illegal immigration. Once legal, ex- illegal laborers would realize that they would be more likely to find employment with better wages, better protections, and year- round employment. Thus, the agricultural employers will again be faced with hiring illegals or making their jobs more attractive to domestic workers.

PART VII- RECOMENDATIONS

Perhaps the only definite conclusion one can make about importing foreign labor and the H-2A Temporary Agricultural Worker Program is that perhaps no one solution is possible. There are too many factors and opposing forces playing roles in reform efforts. However, below are a few recommendations to those working to reform the H-2A program and U.S. immigration policy.

- 1) Above all, the H-2A program or any new guest worker program should be ethically sound. Foreign laborers simply deserve better guarantees (wages, benefits, and protections) and respect. These workers are not beasts of burden. They are hard working people with families, goals, and dreams like any citizen of the U.S. For any program admitting temporary nonimmigrant workers to not be covered by the Migrant and Seasonal Agricultural Worker Protection Act is appalling and unacceptable. This protection should be backed with stronger enforcement at federal and state levels. Furthermore, the President needs to create an immigration cabinet position. Such a position will keep the White House updated on immigration issues, especially those concerning undocumented labor, and facilitate discussion between the government and labor organizations. Finally, the responsibilities of the Secretary of Labor should include the welfare of undocumented workers.
- 2) Increasing worker protections, benefits, and wages with reform of the H-2A program (or under a new guest worker program) will only make the program more costly for employers, causing them to not use the program and continue hiring illegal workers. Thus, a compromise must be met between decreasing employer costs and increasing worker guarantees:
 - a. A compromise can be met in regards to the housing requirement. A housing allowance would aid many more agricultural employers in affording the use of the program. Therefore, this housing allowance reform should be similar to the one included in the AgJOBS bills. The employer would have the responsibility of finding the to-standard housing for his/ her employees. In this way, the overall cost of the employer guarantees would be more affordable while the workers are guaranteed adequate housing. This would cost the hiring company more time but annual hiring of H-2A employees will most likely lead to the annual occupancy of the same housing.
 - b. The burden of testing the labor market for sufficient domestic labor or adverse effects should be the responsibility of the U.S. government. It seems quite plausible that U.S. government can easily research and consistently update this information so that is instantly accessible when an employer wishes to contract nonimmigrant laborers. This will make the program more affordable for employers and will allow them to request workers much closer to the date of need as the time needed to test the market after the request would be eliminated. Perhaps, a new government agency can be established that can collect these data,

enforce the provisions of foreign worker programs, and seat a member on the White House cabinet. A special government agency dealing specifically with immigration issues and possessing influence in the White House is long over due.

- 3) The H-2A program contains vague and confusing for H-2A employers. Any H-2A reform or the passage of a new guest worker program should enumerate provisions more directly and clearly. Also, a new concise employer handbook should be written by the Employment and Training Administration and released to agricultural employers.
- 4) Illegal immigration must be stopped, not because foreigners are breaking the law, but because of the dangers and the exploitation associated with the phenomenon. In respect to the agricultural industry, illegal immigration can be stopped through the discontinuation of illegal employment that is halted by an adequate supply of labor. The question then is whether an amnesty would finally provide an adequate supply of labor to agricultural employers. The GOA in '97 report established that there was a surplus of agricultural labor in the U.S. when undocumented laborers were included. Therefore, an amnesty should numerically provide a sufficient, legal labor pool for the agricultural industry. Yet, this labor supply may not be stable as many newly legal workers may find employment in more attractive industries thus defeating the purpose of the amnesty to provide a sufficient labor supply. A prerequisite for the adjustment of status requiring undocumented laborers to work in the agricultural industry for a certain period of time would prevent this exodus from the agricultural industry. Many would rightly draw parallels between such an amnesty prerequisite and indentured servitude. However, as long as the required agricultural work was not excessive (not beyond three years perhaps), this may be the only answer to a very complicated issue. Furthermore, if these illegals do not receive an amnesty and choose to continue working in the U.S., they would most likely continue working within the agricultural industry anyway. Finally, the work requirement would be for time after the amnesty becomes law. Proving the time worked after amnesty enforcement is more plausible than proving past (illegal) years of time worked.
- 5) The amnesty granted in 1986 illustrated that perhaps amnesties do not ultimately stop illegal immigration. Therefore, the agricultural industry must take a further step in keeping its workforces legal. A uniform, electronic, instant verification service must be established. Allowing potential employees the opportunity to fraudulently reproduce 20 different verification documents is ridiculous. Furthermore, agricultural employers need to receive proper education in respect to different verification documents and any new verification system established.

Hopefully recommendations of this kind (or versions there of) will correct the problems with the current nonimmigrant temporary worker program and step U.S. immigration policy in the right direction. If these recommendations function as written, the operating of the H-2A program (or any new guest-worker program) will more adequately provide worker guarantees, be less costly, take less time, be more easily understood, and begin decreasing ever-dangerous illegal immigration. However, the

issue of immigration is very complicated in U.S. especially in light of the recent terrorist attacks. Thus, any reform will be difficult to gain support from all involved parties and, therefore, must proceed with caution.

APPENDICIES

Appendix I- Article 29 of the Mexican Federal Labor Law

All contracts for Mexicans lending services outside of the country are to be in writing, are to be legalized by the local municipal authorities of the place they are entering, and overseen by the Consul of the host country. All contracts must contain the following provisions or the contracts are deemed invalid:

- 1) Employer or contractual parties will pay transportation costs, subsistence costs, and any other costs as a result from the immigration of the employee and his family from the point of origin to the border point.
- 2) The employee shall be paid in full the salary contracted.
- 3) The employer must issue a bond or deposit cash in the Bank of Workers or, in the absence of this in the host country, in the Bank of Mexico (in satisfaction with the respective labor authorities) the amount of the repatriation costs.*
- 4) Once it is proven that the employer has paid the contracted employee in full, the bond will be cancelled or the deposit will be returned.

* The third provision did not apply to the United States during the program because of the transportation and subsistence cost reimbursements enumerated within the Bracero contract.

Appendix II- Adverse Effect Wage Rates by State: Years 1999- 2001

2001 Adverse Effect Wage Rates (AEWRs)

State	2001 AEWR
Alabama.....	\$6.83
Arizona.....	6.71
Arkansas.....	6.69
California.....	7.56
Colorado.....	7.43
Connecticut.....	8.17
Delaware.....	7.37
Florida.....	7.66
Georgia.....	6.83
Hawaii.....	9.05
Idaho.....	7.26
Illinois.....	8.09
Indiana.....	8.09
Iowa.....	7.84
Kansas.....	7.81
Kentucky.....	6.60
Louisiana.....	6.69
Maine.....	8.17
Maryland.....	7.37
Massachusetts.....	8.17
Michigan.....	8.07
Minnesota.....	8.07
Mississippi.....	6.69
Missouri.....	7.84
Montana.....	7.26
Nebraska.....	7.81
Nevada.....	7.43
New Hampshire.....	8.17
New Jersey.....	7.37
New Mexico.....	6.71
New York.....	8.17
North Carolina.....	7.06
North Dakota.....	7.81
Ohio.....	8.09
Oklahoma.....	6.98
Oregon.....	8.14
Pennsylvania.....	7.37
Rhode Island.....	8.17
South Carolina.....	6.83

South Dakota.....	7.81
Tennessee.....	6.60
Texas.....	6.98
Utah.....	7.43
Vermont.....	8.17
Virginia.....	7.06
Washington.....	8.14
West Virginia.....	6.60
Wisconsin.....	8.07
Wyoming.....	7.26

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